

***United States Court of Appeals
for the Second Circuit***



APPENDIX

B
P/S

75-1268

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

JACK L. CHESTNUT,

Defendant-Appellant.

APPEAL FROM UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

APPENDIX
Volume IV
Pages 336-448

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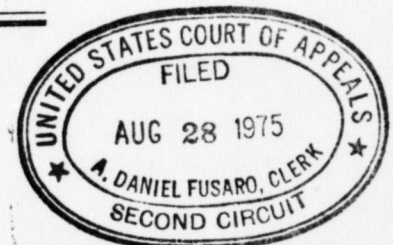
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2 THE COURT: You agree you should withdraw it,
3 don't you?

4 MR. TOMSON: I respectfully withdraw the ques-
5 tion.

6 THE COURT: The witness may step down.
7 (Witness excused.)

8 MR. GOLD: The Government calls Mrs. Miller.

9 P E N N Y M I L L E R, called as a witness on
10 behalf of the Government, having been first duly
11 sworn by the Clerk of the Court, testified as follows:

12 MR. GOLD: Your Honor, may we approach the
13 side bar?

14 MR. BANNIGAN: On an issue that should not be
15 heard before the jury.

16 THE COURT: All right. Suppose you come in the
17 robing room.

18 (In the robing room.)

19 MR. BANNIGAN: Your Honor, I asked to come here
20 out of an abundance of caution. Mrs. Miller was granted
21 immunity and I am not so sure she is not going to claim
22 that the grant is no longer good. I didn't want that to
23 come out before the jury. Mr. Cooper, her attorney, is here
24 and I would like to expose that.

25 THE COURT: What is the problem? The witness has

2 just been sworn. I haven't heard a question put. What is
3 the issue?

4 MR. BANNIGAN: I don't think the jury should
5 know if she is going to claim the Fifth Amendment privilege
6 on the stand. There is a legal question whether she has
7 it.

8 MR. COOPER: I think I can dispose of the prob-
9 lem. You showed me the order this morning and I told you
10 then that I regarded it as satisfactory.

11 MR. BANNIGAN: All right.

12 THE COURT: Would you state your name for the
13 record?

14 MR. COOPER: Richard M. Cooper. I am with the fi
15 firm of Williams * Kallifano in Washington, D. C. I am a
16 member of the Bar of the District of Columbia and the
17 Supreme Court of the United States.

18 (In open court.)

19 DIRECT EXAMINATION

20 BY MR. GOLD:

21 Q Mrs. Miller, do you know the defendant Jack
22 Chestnut?

23 A Yes, I do.

24 Q How long have you known him?

25 A For approximately nine years.

1 rke Miller - direct

2 Q Will you tell the Court how you are presently
3 employed?

4 A I am office manager for Mr. Chestnut's law firm.

5 Q Is that the position you have held for the last
6 nine years?

7 A Yes.

8 Q Would you tell us where that firm is located?

9 A It is in Minneapolis, Minnesota.

10 Q And the building in which it is located.

11 A Midland Bank Building.

12 Q Focusing on the year 1970, do you recall whether
13 or not Mr. Chestnut at that time became involved in a
14 political campaign?

15 A Yes, I do.

16 Q Whose campaign was he involved in at that time?

17 A Senator Humphrey's campaign.

18 Q Did he hold any special position on Mr. Humphrey's
19 campaign staff?

20 A Yes. He was the campaign manager.

21 Q In connection with his duties as Mr. Humphrey's
22 campaign manager in 1970, did Mr. Chestnut maintain any of-
23 fice separate and apart from his law office?

24 A That he himself was located in?

25 A Yes.

1 rke 11 Miller - direct 222

2 A No.

3 Q Are you aware of whether or not the campaign
4 staff maintained any office apart from Mr. Chestnut's
5 law office?

6 A Yes, there were several.

7 MR. BANNIGAN: I have to ask the witness to
8 speak up. I can barely hear her here.

9 THE COURT: Please keep your voice up.

10 Q I am sorry, I didn't hear your answer, either.

11 A There were several offices.

12 Q Was one of those offices, Mrs. Miller, located
13 in the Midland Bank Building where Mr. Chestnut's law office
14 was located?

15 A Yes, there was a portion of the campaign located
16 there.

17 Q I suppose you better tell us what floor in that
18 building the law office is located on and what floor the
19 campaign office was located on?

20 A The law office was located on the eighth floor and
21 there were some campaign people located on the ninth floor.

22 Q As far as Mr. Chestnut's duties as campaign
23 manager were concerned, he conducted his affairs as cam-
24 paign manager from his law office on the eighth floor, is
25 that right?

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A That is correct.

Q In 1970, you were Mr. Chestnut's office manager for the law firm, is that right?

A That is correct.

Q In addition to those duties, did you perform any other secretarial duties for Mr. Chestnut?

A Yes, I did, secretarial work for Mr. Chestnut and some of the other attorneys.

Q Mrs. Miller, focusing on your role as assisting Mr. Chestnut as campaign manager for Mr. Humphrey in 1970, what specific duties did you perform for Mr. Chestnut?

A Secretarial work. Hiring of some clerical personnel and making deposits and keeping track of mail, et cetera.

Q Do you recall any other functions that he performed?

A Not offhand, no.

Q Did you keep any financial records pertaining to the Humphrey Senate Campaign?

A Relating to the deposits, yes.

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1 MMjw 1 Miller - direct 224
2 Q What kind of records were they? Would you
3 describe them for us?
4 A Yes, they were 3 by 5, what we call contributor
5 cards, and there were various small sheets of receipts
6 and expenditures for the bank accounts and then the
7 deposit book.
8 Q Let's talk about the contributor cards for
9 a minute. Was any entry made on those contributor
10 cards to show the amounts actually contributed?
11 A Yes.
12 Q Well, did the cards also reflect whether or
13 not the contribution was made in cash?
14 A I believe so. I am not sure.
15 Q I take it the contributor's name appeared on
16 the card?
17 A Yes.
18 Q You said something about keeping records
19 pertaining to bank accounts. What were they?
20 A The accounts.
21 Q What records did you keep that pertain to the
22 campaign bank accounts?
23 A Receipts, expenditures and then the remaining
24 balance.
25 Q Do you recall attending any meetings of the

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campaign staff the purpose of which pertained to campaign finances at which meetings you took minutes?

A I am sure there were some. I don't recall specific meetings offhand.

Q Are you clear, Mrs. Miller, that there were occasions when you attended such meetings and took notes pertaining to the financial affairs of the Humphrey campaign?

A I took minutes at meetings and they usually covered several subjects, sometimes some of which would have been finances.

Q Are those minutes presently available?

A No, they are not.

Q In 1970 were you familiar with a firm by the name of Lennen & Newell?

A Yes, I was.

Q What dealings, if any, did you have with that firm?

A I was introduced to the two gentlemen who were in Minneapolis working for Lennen & Newell and sent various correspondence to them.

Q Do you recall the names of those individuals?

A Yes, I do, Barry Nova and Gerry Gross.

Q Now, in the course of working for Mr. Chestnut

1 mmjw 3 Miller - direct 226
2 over the nine year period, have you had occasion to
3 observe his signature on a substantial number of occasions?
4 A Yes, I have.
5 Q Would you further say that you have done so
6 hundreds of times?
7 A I would think so.
8 Q I take it you are generally familiar with
9 his signature and you can identify it when you see it?
10 A More or less, yes.
11 Q I show you Government's Exhibits 6 and 7
12 now in evidence and ask you if you can identify the
13 signatures appearing on those documents.
14 A It appears that they might be Mr. Chestnut's.
15 They might also be -- there are others, myself included,
16 that have often tried to sign things as he writes them.
17 Q Take a look at Government's Exhibit 7, if you
18 will. Have you ever seen that before?
19 A Yes, I have.
20 Q Where was that?
21 A Most recently last week in our office.
22 Q Do you recall testifying before the grand
23 jury --
24 MR. THOMSON: Your Honor, I object to any
25 such testimony. It would be hearsay at this proceeding

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227

unless he can lay a foundation.

THE COURT: Yes. I see no basis at this point with respect to prior testimony. You can question the witness, and if the occasion should arise I would consider it then.

Q Was there ever a prior occasion when you identified the signature on Government's Exhibit 7 as being that of Mr. Chestnut?

MR. THOMSON: I am going to object to this as attempting to impeach his own witness.

THE COURT: You may ask the basis for proceeding in this way. But put a direct question to her with respect to the exhibit in question.

Q Are you unsure that the signature on Government's Exhibit 7 is not that of Mr. Chestnut?

A What I am saying is I can't be positive. It looks somewhat like Mr. Chestnut's signature, but I can't be positive.

Q How about the signature on Government's Exhibit 6?

A It is rather faint on this letter.

Q I am sorry, Mrs. Miller, I can't hear you.

A It's rather faint on this letter. It looks something like Mr. Chestnut's signature.

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Miller - direct

228

THE COURT: On Government's Exhibit 7 the initials alongside of JLC are PM.

THE WITNESS: Yes, sir.

THE COURT: Those are your initials?

THE WITNESS: Yes.

THE COURT: Did you type that letter?

THE WITNESS: Yes, I did.

THE COURT: Do you have a recollection of typing it?

THE WITNESS: After I was shown it I assumed I must have, but I don't recall.

THE COURT: Look at the signature. Do you recognize that signature?

THE WITNESS: It looks like Mr. Chestnut's signature, yes.

MR. GOLD: Your Honor, I need Defendant's Exhibit C. I believe it was circulated yesterday.

Q Mrs. Miller, take a look at Defendant's Exhibit C in evidence and tell us if you recognize the handwriting that appears at the bottom of that letter.

A Yes, that is mine.

Q Getting back to the campaign records that were made and maintained during the 1970 Senate campaign, prior to 1973, can you tell us where those records were

2 kept?

3 A The records were kept in various places, some
4 of them in a cubbyhole that we have on the ninth floor;
5 some of them stacked in boxes in various offices in the
6 law firm.

7 Q Where, specifically, were the bank accounts
8 kept?

9 A I'm not sure, I think they may have been in
10 several of those spots.

11 Q Mrs. Miller, I direct your attention to page
12 45 of Government's Exhibit 3770 for identification.

13 MR. THOMSON: I am going to object to this
14 procedure, to take their own witness and refresh her
15 memory.

16 THE COURT: The witness does not recall.
17 The recollection of a witness may be refreshed by any
18 document or any material of any kind. It could be a
19 newspaper. Objection overruled.

20 Q Mrs. Miller, would you be good enough to
21 read that page over to yourself and tell us whether that
22 refreshes your recollection about where the bank account
23 records were kept?

24 A I am sorry. I thought --

25 THE COURT: Raise your voice. I can't hear

2 you and I am sitting very close.

3 THE WITNESS: I am sorry. I thought you
4 meant after I had cleaned house in my office and moved
5 all the records. During the period of time that the
6 campaign was being run the financial records were kept
7 in a filing cabinet in my office.

8 THE COURT: You are talking about 1970 now
9 when you are saying the campaign was being run.

10 THE WITNESS: Yes.

11 Q Did there come a time, Mrs. Miller, when
12 no specific records were removed from the filing cabinet
13 in your office and transferred to another location?

14 A Yes.

15 Q And where were they moved to?

16 A Some to the ninth floor and then might have
17 been some left in a box on the eighth floor.

18 Q Now focusing on the contributor cards, for
19 a time during the year 1970 campaign, were they maintained
20 in a filing cabinet in your office?

21 A Yes.

22 Q And did there come a time when they were as
23 well removed to another location for storage?

24 A Yes, I needed the room.

25 Q How about the correspondence for the campaign,

1 mmjw 9 Miller - direct

2 was that maintained during the campaign in your office?

3 A There were several locations for the corres-
4 pondence, ninth floor, various locations in our office
5 where the campaign was located.

6 Q One more question on the contributor cards.
7 Do you recall ever having copies of those contributor
8 cards?

9 A I don't believe copies were ever made of the
10 cards. Thank you letters were made in duplicate.

11 Q What happened to those thank you letters?

12 A One was filed, and that would be filed some-
13 where on the eighth floor. A copy went to one of the
14 campaign workers for Senator Humphrey. I believe it
15 went to Vi or one of the other workers and she kept
16 copies of them.

17 Q The woman you refer to as Vi, was she employed
18 in Senator Humphrey's office in Washington?

19 A She was a private citizen at the time, but
20 she is now.

21 Q As far as you know, were copies of those
22 thank you letters pertaining to contributions sent to
23 Senator Humphrey in his Senate office?

24 A I don't know if Vi took them along with her.
25 He did not have a Senate office at the time.

2 Q Mrs. Miller, I am showing you page 47 of
3 Government's Exhibit 3770. I direct your attention to
4 line 2 and ask you to read the balance of that page and
5 tell us whether or not that refreshes your recollection
6 about what, if anything, happened to your copies of thank
7 you letters with respect to Mr. Humphrey's Senate office.

8 A Yes, I said they were sent to his Senate
9 office but I forget he was a private citizen at the time.
10 It seemed like he had been a Senator for so long now
11 I forget that there was a period when he was not.

12 Q Following Mr. Humphrey's election to the
13 office of the United States Senate the election of 1970
14 where were the campaign records taken?

15 A Records of mine? That I was keeping?

16 Q I will withdraw it and rephrase the question.

17 Following Senator Humphrey's election to the
18 United States Senate in 1970 were the records which you
19 had maintained in the Midland Bank Building taken to any
20 other location?

21 A Outside of the building? I don't believe so,
22 maybe some correspondence folders, but nothing else.

23 Q As far as you know the records stayed in the
24 building?

25 A That is correct.

2 Q Were they moved to any location within the
3 building other than where they had been maintained during
4 the campaign?

5 A The ninth floor, our cubbyhole that we have
6 for storage, and in various offices in our law firm in
7 boxes.

8 Q How were they stored? Could you describe
9 them?

10 A Yes, they are stored in boxes, about 15 inches
11 by 12 inches, and high enough to contain a legal folder.

12 Q Was this done prior to 1973?

13 A Yes.

14 Q Are the financial records pertaining to the
15 1970 Humphrey Senate campaign still in storage in the
16 Midland Bank Building in Minneapolis?

17 A No, they are not.

18 Q Are they still in existence?

19 A No, they are not.

20 Q Could you tell us how they went out of existence?

21 A Yes, sir. Sometime after the --

22 Q I asked you how, not when. We will come to
23 that.

24 A Oh, yes, I cleaned them out and threw them
25 out.

2 Q Did you throw them out personally?

3 A I did not personally dump them in a trash
4 barrel. They went in a hall by our office and, some of
5 them, those that I did not want sitting out there where
6 they would have access to people passing by, I took them
7 downstairs and put them in the incinerator and the bank
8 building.

9 Q Did you do this alone?

10 A No, I asked various other people to help me
11 clean house and straighten up the office.

12 Q Could we have the names of the other people
13 who you asked to assist you in destroying records?

14 A At each and various times? Let's see.

15 In 1971 --

16 Q Please, just the names. We will come to the
17 dates later.

18 A I can't remember the names of everybody.
19 Jennifer Broome helped me at one time, or we helped each
20 other and I think maybe Pam Nelson helped at one point.
21 There were several times, and not all of these people are
22 still at our law firm. So I am not sure who was helping
23 when.

24 Q Do you recall the year in which these records
25 were destroyed?

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2 A Let's see. There were several.

3 Q Excuse me. Just the year.

4 A I believe it was 1972, maybe 1971, and possibly
5 some left from the 1970 campaign in early 1973.

6 Q Are you familiar with what has become commonly
7 known as the Senate Watergate Committee?

8 A Yes, sir.

9 Q Do you recall whether the Senate Watergate
10 Committee was in session at the time the decision was made
11 to destroy the Humphrey campaign records?

12 A I don't believe so.

13 Q Mrs. Miller, I direct your attention to page
14 57 of Government's Exhibit 3770 for identification.

15 I ask you to read the questions and answers
16 that begin on line 13 to yourself.

17 A Yes?

18 Q Does that refresh your recollection about
19 whether or not the Senate Watergate Committee was in
20 session at the time the decision was made to destroy these
21 records?

22 A It refreshes what I said at the time. I don't
23 believe that I had the time right at that time, and, as
24 I mentioned to your last Saturday.

25 Q You are suggesting that your prior recollection

1 mmjw 13

Miller - direct

236

2 was inaccurate?

3 A Yes, I am.

4 MR. GOLD: Will your Honor bear with me just
5 a moment?

6 Mrs. Miller, do you recall testifying in a
7 federal grand jury with reference to the Humphrey campaign?

8 A Yes, I do.

9 Q Do you recall how many times you testified
10 before a grand jury?

11 A How many sessions?

12 Q Yes.

13 A One afternoon and then it was continued the
14 next morning or afternoon. I am not sure which.

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Q Do you recall any conversation with Mr. Chestnut at the time the Humphrey Campaign records were destroyed with specific reference in the conversation to the Senate Watergate Committee?

A As I mentioned to you, when we talked Saturday, I am not sure. There was a conversation with Mr. Chestnut that I testified to in the grand jury and I was trying to remember at the time when it had taken place and I am not certain now when that conversation took place, at which time I was cleaning out the records from the office.

Q Mrs. Miller, do you recall testifying in a grand jury on November 20, 1974, and I am reading from page 58 beginning at line 25 and following.

MR. THOMSON: I will object as improper impeachment.

THE COURT: Overruled.

Q Mrs. Miller, do you recall being asked this question and giving the following answer:

"Q All I am asking you is, did the subject of the Watergate Committee or the Watergate Investigation come up in the context of any conversation between you and Mr. Chestnut with you and Mr. Chestnut and others concerning the disposal of these records?

"A He may have said something about it, but if

1 rke 2 Miller - direct 238
2 he did, it was insignificant enough that I don't remember
3 any specific conversation in that light."
4 A Yes, I recall that.
5 Q Do you recall giving that answer to that ques-
6 tion?
7 A Yes.
8 Q That was on November 20, 1974, the date of your
9 first grand jury appearance, is that correct?
10 A It must have been the first day. I didn't recal
11 which day it was.
12 Q Thereafter you appeared in the grand jury on the
13 following day, is that right?
14 A Yes.
15 Q When you appeared in the grand jury the next
16 day, as far as you know, did you or anyone acting on your
17 behalf request an opportunity for you to make a statement in
18 clarification of the testimony you had given under oath
19 on the prior day?
20 A I asked if I could make a statement, yes.
21 Q Did you make such a statement?
22 A Yes, I did.
23 Q Reading from Government's Exhibit 3770 beginning
24 at page 74, line 15.
25 MR. THOMSON: Again, I object to this as improper

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Miller - direct

239

without a foundation.

MR. GOLD: It is clearly direct.

MR. THOMSON: He is using hearsay in another proceeding without foundation.

THE COURT: You better ask her what statement she made.

What statement did you make the next day to clarify your testimony?

THE WITNESS: I expanded on the conversation that Mr. Chestnut and I had had at one point and was trying to recall exactly what it was that he said and it was hard to do so and at the time I was nervous and scared and confused and I said I thought I recalled he said something about well, I have a legal opinion, I am not legally obligated to keep these records and there is nothing damaging in them.

I am trying to remember it exactly. There is nothing damaging in them and we need -- I don't know if he said we need the space or not, and they all get them anyway.

Q Mrs. Miller, prior to taking the witness stand this morning, have you had occasion to review at length your grand jury testimony that you just now told us you recall?

2 A Have I had an opportunity to review it this
3 morning?

4 Q Prior to taking the witness stand in this
5 courtroom this morning, have you had an opportunity to
6 review with your lawyer the grand jury testimony that you
7 now tell us you recall, specifically, your statement to the
8 grand jury?

9 A I read through it once before talking to you in
10 your office but I didn't really review it at length.

11 Q On Tuesday, April 29, 1975, do you recall
12 spending several hours reviewing the materials provided?

13 A I don't know how much time was spent. I do know
14 that I read through it once with my attorney.

15 Q Isn't it a fact that you even have a copy of
16 the statement which you gave before the grand jury on
17 November 21, 1974?

18 A My attorney has a copy of something you gave him
19 but I don't personally have a copy.

20 Q And you didn't read it prior to getting on the
21 stand this morning?

22 A No, I didn't.

23 Q You just gave us your best recollection of a
24 conversation with Mr. Chestnut at the time certain records
25 were destroyed and you made a reference to the word "they".

To whom does the word "they" refer?

A I am confused now myself because at the time when I was before the grand jury, as soon as I was trying to place the time that we were cleaning house and making room, I mentioned '73 and then I think in retrospect, got the newspaper stories and the timing mixed up.

I don't know for sure who it was that he was referring to.

THE COURT: What timing are you referring to when you say you got the newspaper stories and the timing mixed up. The timing of what?

THE WITNESS: The timing of when it was that we were cleaning out all the materials from the office and at which time I had the conversation with Mr. Chestnut.

THE COURT: Do you recall the conversation you had with him at that time?

THE WITNESS: I recall it. I am not exactly sure at which time I was cleaning out the records, at which time it took place.

There were several instances where I was cleaning out records from the office.

THE COURT: When you say cleaning out records, I take it you are referring to records that you testified to that were taken down to the incinerator in the building

2 and burned?

3 THE WITNESS: Several types of records, company,
4 legal.

5 THE COURT: What was the conversation you had
6 with him on those occasions. You say there were several
7 occasions.

8 Maybe you could fix the time by reference to
9 some other document. What were the conversations you had?

10 THE WITNESS: One of the conversations I remembe
11 is that I had to find out from him -- I didn't know for
12 sure if I could throw everything out because there was so
13 much stuff I wanted to get it all out and he said he would
14 have to get a legal opinion, he didn't know if I could or
15 not and he told me he had called John French, whom I know
16 because we have sought his advice on other matters from time
17 to time and that Mr. French said he had no legal obligation
18 to keep the materials.

19 At some point, I am not sure at which time it
20 was, he made a comment there is nothing damaging in there
21 to us but John says it is okay, it is legal and then they
22 won't get them anyway.

23 THE COURT: They won't get them?

24 THE WITNESS: Yes. At the time I testified
25 before the grand jury, I wasn't certain of the timing.

1 THE COURT: What is your best recollection now
2 as to the first time you had any conversation on the
3 subject with Mr. Chestnut?
4

5 THE WITNESS: I have been trying to sort it
6 out, your Honor.

7 I connect it with -- more with the legal opinion,
8 I thought and then I also did some more house cleaning in
9 '73 and I am not sure at which time. The legal opinion,
10 Mr. Chestnut called Mr. French in '72, so I am not sure which
11 time the conversation took place.

12 THE COURT: Who is Mr. John French?

13 THE WITNESS: He is an attorney with the firm of
14 Farvey and Benson in Minneapolis.

15 THE COURT: Was it a written opinion, if you
16 know?

17 THE WITNESS: I don't know if Mr. French ever
18 prepared it in writing or not.

19 BY MR. GOLD:

20 Q Mrs. Miller, in giving us your best recollec-
21 tion of your conversation with Mr. Chestnut, in which
22 reference was made to "they" and that "they" would get
23 them anyway; do you know at or about the time that conver-
24 sation took place, the Senate Watergate Committee was in
25 session?

2 A I don't know because I am not certain if it
3 took place in '72.

4 Q I show you Government's Exhibit 3770 for iden-
5 tification and ask you to begin reading to yourself at
6 page 77, line 16 and the top of the following page.

7 A Yes.

8 Q Does that refresh your recollection as to
9 whether or not the Senate Watergate Committee was in session
10 at or about the time you had the conversation with Mr. Chest-
11 nut?

12 A No, sir, it does not. I know what I said there
13 that you just showed me. I also know that after talking
14 to you in your office last week, as I called and told you,
15 I went back trying to sort out the timing because we had
16 talked about it and I really think I was running everything
17 together at that time.

18 Q I take it it is fair to say Mrs. Miller, your
19 recollection on the subject has changed somewhat over the
20 last six months?

21 A I have given more thought to it than I have ever
22 given before. Yes, it has changed.

23 Q You have given more thought to it recently
24 than you had when you testified under oath in the grand jury

25 A Yes, sir. I didn't know what questions they were

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Miller - direct

245

going to ask me. I had not sorted out any timing or was unaware of it so on the spot, I had to try and think of a sequence of events covering the last five years and I got mixed up in it.

Q In November of 1974, your best recollection, I take it, that the conversation with Mr. Chestnut took place at the time when the Senate Watergate Committee was in session?

A I said I thought it was.

Q You said you thought it was?

Reading from Government's Exhibit 3770, page 78, line 2 and following:

Were you asked this question and did you give this answer?

MR. THOMSON: I object, lack of foundation.

THE COURT: Overruled.

Q "Q But that you thought the so-called Senate Watergate Committee or Irwin Committee was in session during this time?

"A Yes, I know it was in fact."

Did you make that answer to that question under oath?

A Yes, sir, I did.

Q And that is not your recollection today?

2 A That is correct. I think that is wrong.

3 Q Mrs. Miller, when did your recollection on that
4 point change for the first time?

5 A After I talked to you last week because you and
6 Mr. Bannigan had talked about it at some length and after I
7 testified before the grand jury, I had been so scared and
8 nervous, I just went home and forgot all about it and after
9 we had talked, I went back home and tried to sort out in
10 my own mind what took place when, and going back over a
11 period of five years sometimes campaigns run together.

12 There were two campaigns. I did some political
13 work and then I remembered that when we cleaned out the
14 largest portion of materials was when Jennefer brought the
15 truck with all that furniture and the files and then I
16 started trying to remember when that was and realized it
17 was sometime after the Convention, and the Convention was in
18 the summer of 1972.

19 So, remembering the truck and the timing of the
20 Convention helped me to sort it out myself.

21 Q Just focusing on the sequence of events with
22 respect to which your recollection now tells us has changed
23 back in November of 1974, approximately six months ago
24 when you testified in the grand jury, your best recollection
25 at that time was that these conversations were conversation

with Mr. Chestnut making reference to the Senate Watergate Committee which occurred sometime in 1973; is that correct?

A Yes.

Q Last Tuesday, April 29, 1975, do you recall being in the United States Attorneys Office, accompanied by your lawyer?

A Yes, sir.

Q Is it fair to say that we generally discussed the facts bearing on this case in the presence not only of your lawyer, two assistant U. S. Attorneys, but two special agents of the FBI as well?

A Yes, we did discuss it.

Q I take it it is sometime after the meeting of Tuesday, April 29, that your recollection suddenly began to change and this conversation that now, according to your best recollection, took place sometime prior to 1973?

A Yes, sir, that is right.

Q You still work for Mr. Chestnut, do you not?

A Yes, I do.

Q Focusing back to November 1974 when you were given an opportunity to clarify your testimony under oath for the ladies and gentlemen of the grand jury, would you give us your best recollection of precisely what you told

1 the ladies and gentlemen in the grand jury concerning your
2 conversation with Mr. Chestnut about the destruction of the
3 records?
4

5 A Okay.

6 It is hard to remember exactly so I will do the
7 best I can.

8 I told them that I had had remembered a conver-
9 sation with Mr. Chestnut and would try to remember to the
10 best of my ability what it was, what the conversation was
11 that took place and then I told them the conversation that
12 we just had recently about going over.

13 Q Did you tell the ladies and gentlemen of the grand
14 jury what specifically had refreshed your recollection
15 causing you to seek an opportunity to amend your sworn
16 testimony of the previous day?

17 A Yes, I do.

18 Q What was that?

19 THE WITNESS: Will I lose my attorney-client
20 privilege if I answer that question?

21 THE COURT: I will pass upon it out of the hear-
22 ing of the jury.

23 THE WITNESS: I don't know.

24 THE COURT: I will hear you out of the presence
25 of the jury and tell you whether or not it is attorney-

1 rke

Miller - direct

249

2 client privilege.

3 Members of the jury, remain in the courtroom.
4 Counsel for the witness may come in.

5 (In the robing room.)

6 MR. BANNIGAN: Would you like us to go out, your
7 Honor?

8 THE COURT: I think I ought to hear this just
9 in the presence of the witness and her lawyer. If there
10 is a privilege, it would be violated.

11 I was asked by the Assistant as you walked in
12 defense counsel, you should have been here when he put the
13 question, whether or not Mr. Bannigan and his associate
14 should leave the room and I said yes, because it seemed to
15 me I could only pass upon this by hearing the witness in the
16 presence of her lawyer, who is representing her and if
17 there is a protective privilege, it would be disclosed if
18 you were all in the room.

19 Do you all agree with that?

20 MR. BANNIGAN: Yes, your Honor.

21 MR. THOMSON: Yes.

22 THE COURT: Counsel for the witness, of course,
23 will remain.

24 We will order this portion sealed from this
25 point on until I make my ruling.

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Miller - direct

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MR. COOPER: There is no one else present whose presence would constitute a waiver.

THE COURT: My law clerk and the clerk of the Court.

MR. COOPER: My only concern is that she not waive her privilege.

(Pages 251 to 253 were ordered sealed by the Court.)

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Miller - direct

254

(In open court.)

THE COURT: Would you please read the last question put to the witness in the presence of the jury.

(The question was read.)

THE COURT: The Court directs the witness to answer and holds there is no privilege and indicates on the record.

A A conversation with my attorney.

Q And his name?

A William Farvey.

Q Tell the Court and jury what you said to your lawyer, what he said to you that prompted you to go back to the grand jury and amend your testimony?

MR. THOMSON: Objection.

THE COURT: Sustained.

I hold the privilege exists there. The question was what caused her to recollect and she answered a question with her attorney.

Q Was there anything else that refreshed your recollection at that time?

A No. Basically it was the conversation that I had with my attorney.

Q How about notes? Did notes play any part in refreshing your recollection.

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Miller - direct

255

A I believe my attorney had some notes.

THE COURT: Do you recall after you appeared before the grand jury to clarify your earlier testimony what you did tell the grand jury in clarification of your earlier testimony?

THE WITNESS: Yes, sir.

THE COURT: What did you tell the grand jury?

THE WITNESS: I told them that I had had some conversations with Mr. Chestnut, or had a conversation. There may have been several, but that I did remember a conversation and told them the conversation to the best of my recollection.

MR. GOLD: Read back the answer.

(Record read.)

1
2 Q Tell us what your best recollection was of
3 that conversation, at least, as you related it to the
4 grand jury on November 21st.

5 A Yes, sir. I said that Mr. Chestnut had told
6 me he was going to call John French because he didn't
7 know if I could clean out all of the materials, he would
8 have to find out because he was uncertain as to what he
9 was legally required to do.

10 He came back and at some point said, "I have
11 talked to John French. I think he said I have no legal
12 obligation to keep those records. There is no reason to
13 keep them. There is nothing really in them anyway and,"
14 or "There is nothing"-- just a moment. I am sorry.
15 I am getting confused. "There is nothing in them that
16 is damaging to us and then they would get them anyway."

17 Q Mrs. Miller, isn't it a fact that what you
18 said to the Grand Jury was as follows, reading from page
19 76, Government's Exhibit 3770, beginning at line 9 --

20 MR. THOMSON: I object to this as improper.

21 THE COURT: I didn't hear what you said.

22 MR. THOMSON: Improper. No foundation. He
23 was attempting to impeach his own witness without a
24 proper foundation.

25 THE COURT: Overruled.

1 mmjw 2

Miller - direct

2 Q "The other item that it concerned was when
3 Mr. Galus" --

4 Was he the special prosecutor who had put
5 questions to you in the grand jury the previous day?

6 A Yes, he was.

7 Q "The other item that it concerned was when
8 Mr. Galus was asking me about any conversation, when we
9 were throwing away the records, and clearing up the
10 records, Mr Galus asked me very specifically if there
11 were any conversations relating to the Senate Watergate
12 investigation and when I had talked to Mr. Falvey, and
13 and in jury trying to recall things that happened, he
14 asked me the same thing and he went over his notes of what
15 I had told him and the circumstances were -- you know,
16 it was easier talking to him and having time, you know,
17 to remember under better circumstances or easier circum-
18 stances. There was at least one conversation that I had
19 specifically been able to recall when I talked to him,
20 and Mr. Chestnut had said to me something, and I am not
21 it is an exact quote -- it has been a while -- there was
22 a reference made to the Watergate investigation. The
23 reference was something like, you know, I don't think
24 there is anything damaging in there, I haven't looked
25 through them, I don't think they -- "they" meaning the

1 mmjw 3

Miller - direct

2 Watergate Committee -- I don't think they could do me
3 any harm with them, but, you know, let's get rid of them
4 anywa, we don't need to keep them, I am not doing anything
5 illegal by throwing them away, and then they won't
6 have them anyway. I think to the best of my recollection
7 that that is what was said."

8 Was that a statement you made under oath on
9 November 21 before the grand jury?

10 A Yes, it was, and last week --

11 MR. GOLD: Thank you.

12 Q Mrs. Miller, when you first appeared in the
13 grand jury on November 20, 1974, you refused to answer
14 the questions put to you; is that correct? In the first
15 instance.

16 A Oh, I was advised by Mr. --

17 Q The answer is yes, you refused to answer
18 questions in the first instance.

19 A Here says --

20 Q And it was not until the Chief Judge of the
21 District Court signed an order --

22 MR. THOMSON: I am going to object to this
23 as leading and suggestive and completely irrelevant and
24 immaterial. I don't know whether this is an area of
25 impeachment or what he is attempting to do.

1 mmjw 4

Miller - direct

2 THE COURT: I will allow it.

3 MR. GOLD: It is obvious. If you want me to
4 respond I will be glad to do so at the side bar.

5 THE COURT: Put the question.

6 Q It was not until the Chief Judge of the
7 District Court in the District of Columbia signed an
8 order granting immunity for you that you began to answer
9 questions put to you in a grand jury; is that correct?

10 A That is what he advised me to do, yes.

11 Q You are clear in your mind that prior to the
12 time that immunity was conferred upon you you refused to
13 answer the questions put to you?

14 A Yes.

15 Q And once immunity had been conferred upon you
16 you understood at that time that you could not be prosecuted
17 for any crime based directly or indirectly upon your
18 testimony; is that correct?

19 A No, sir, that is not necessarily correct,
20 because I understood that while if I said something it
21 could not be used against me, but if I said something
22 you could go get somebody else to say the same thing and
23 then it would be used against me. That was my understand-
24 ing of the immunity such as it was granted.

25 THE COURT: Suppose we take our luncheon

mmjw 5 Miller- direct

recess at this point and we will resume at 2:00 o'clock.

Will counsel come into the robing room,
please?

Members of the jury, before we go I am going to again remind you of my original instructions at the very start of the trial about not discussing the case amongst yourselves, nor with one another, nor allow anybody to talk to you about the case, nor have any conversation with any person on the subject and testimony of this trial.

Since the start of the trial the Court observed that there has been publicity about the case, and I am going to enlarge my instructions now that you are not to read anything about the case, listen to any new reports about the case or look at TV about anything pertaining to the case at all. You sit in the best seats of anybody and so far as the testimony in this trial is concerned. There is nothing you can read about the case that will give you any more information than you have, and many times what appears in the news may be of no or little significance as far as the trial is concerned. In order to assure that from the beginning to the end of the trial you keep an open mind, I extend the injunction I previously issued to you to avoid any information coming from the

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Miller - direct

261

news media. If you see an item, disregard that completely.

With that we will take our recess.

(Jury excused)

(In the robing room)

THE COURT: Mr. Thomson, when you made the objection, I did not want to make a statement in the presence of the jury as to why I was overruling your objection. I think it must be perfectly obvious, at least it is to me, that this witness can be considered a hostile witness, certainly, a most reluctant witness if not a hostile witness, whose recollection needs refreshment and that is the reason for my ruling. As I said, I did not want to make the statement in the presence of the jury.

MR. THOMSON: Thank you.

(Luncheon recess)

end t8am

A F T E R N O O N S E S S I O N

2:00 P.M.

(Jury in box)

P E N N Y M I L L E R , resumed.

DIRECT EXAMINATION CONTINUED

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BY MR. GOLD:

Q Mrs. Miller, when we broke for lunch I had just finished reading to you a statement made by you on November 21 in the grand jury in Washington. Do you recall that?

A Yes, I do.

Q As far as you know, the statement that I read to you accurately reflected your testimony before the grand jury on that date, did it not?

A Yes, I don't remember the exact words, but I am sure it does.

MR. GOLD: I would like to have this marked Government's Exhibit next in order.

(Government's Exhibit 16 marked for identification)

MR. GOLD: Your Honor, we offer 16 for identification. I am showing it to counsel.

MR. THOMSON: I object on the ground it is

1 mmjw 2

Miller - direct

2 hearsay and brings undue attention to one segment of the
3 testimony. It is a transcript of the testimony and it
4 is entirely improper.

5 THE COURT: This is already in the record.
6 This was read in the record.

7 MR. GOLD: I would like to make an offer under
8 Sisto. It is in the record, but I would like to have
9 it in as a document.

10 THE COURT: It may be received.

11 (Government's Exhibit 16 was received
12 in evidence)

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13 Q On your direct examination this morning you
14 recall my asking you several questions about the time
15 when the Humphrey campaign records relating to the '70
16 campaign were destroyed. Do you recall that?

17 A Yes, I do.

18 Q Your testimony this morning is that those
19 records were destroyed sometime in 1972? Is that correct?

20 A Yes, sir. I believe that is when the bulk
21 of them were.

22 Q It is also your testimony this morning that
23 those records were destroyed prior to the time when the
24 Senate Watergate Committee was sitting in session? Is
25 that right?

1
2 A Yes, it is.

3 Q On November 21, the date of your second grand
4 jury appearance, were you asked these questions and did
5 you give these answers, reading from page 77, beginning
6 on line 12 and following:

7 "Q Mrs. Miller, I am sure the grand jurors
8 appreciate that clarification. If I might follow up on
9 your clarification a bit: This conversation you remember
10 with Mr. Chestnut, do you remember where it took place?

11 "A I think it was in our offices. I think it
12 was in our offices in the Midland Bank Building, to the
13 best of my recollection that is where it took place.

14 "Q And do you believe it was around the time or
15 shortly before the time when the records were actually
16 disposed of?

17 "A Yes, I do believe it was.

18 "Q You testified yesterday, I believe, that this,
19 to the best of your recollection, occurred sometime in
20 1973, but you didn't know when.

21 "A That is right.

22 "Q But that you thought the so-called Senate
23 Watergate Committee or Ervin Committee was in session
24 during this time.

25 "A Yes. I know it was, in fact."

1 mmjw 4

Miller - direct

2 Does that accurately reflect your testimony
3 before the grand jury on November 21?

4 A That was my testimony, yes.

5 MR. GOLD: Your Honor, I would ask to have
6 this marked next in order and I would offer it.

7 (Government's Exhibit 17 marked for
8 identification)

9 MR. THOMSON: I would offer the entire
10 grand jury testimony in evidence.

11 MR. GOLD: I would oppose it.

12 THE COURT: You may offer other portions
13 that touch on this subject on cross examination, or if
14 you have the particular portions now that relate to this
15 subject, it will be received in evidence.

16 MR. THOMSON: Your Honor, I believe that this
17 witness' entire grand jury testimony relates to the subject.

18 THE COURT: No. This is just a question
19 with reference to what records were placed in an incinerator
20 at a given point. Any testimony on that subject may be
21 received.

22 I will not restrict you in any respect. We
23 are not receiving all the grand jury testimony.

24 MR. COCHRANE: We will glean through the
25 transcript and make a later offer.

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1 mmjw 5

Miller - direct

2 THE COURT: Yes.

3 MR. COCHRANE: Yes, thank you.

4 MR. THOMSON: We do object to Government's
5 Exhibit 17.

6 THE COURT: I don't know why you require this.
7 You just read the testimony of the witness. She acknow-
8 ledged she testified to it. Why do you need any exhibit
9 on it? If the jurors want to hear it read, it can be
10 read.

11 MR. GOLD: This is my last proposed offer
12 and I offer it so there be something the jurors can read
13 at the appropriate time.

14 THE COURT: They can have the minutes read
15 if they want to. You are just cluttering up the record.
16 And this is just one witness in the case. You are going
17 to an issue that is not the major issue in this case,
18 either.

19 Let's move on, please.

20 Q Mrs. Miller, when you first testified in the
21 grand jury on November 20 you refused to answer any ques-
22 tions on the grounds the answers given by you might tend
23 to incriminate you?

24 MR. THOMSON: I am going to object to this
25 as repetitious.

1 mmjw 6

Miller - direct

2 THE COURT: The witness answered she was
3 granted immunity. Please go on to something else.

4 Q Mrs. Miller, at the time you refused to
5 testify prior to the time that you were given immunity,
6 were you fearful that by having participated in the
7 destruction of the Humphrey campaign records that you
8 might have obstructed justice?

9 MR. THOMSON: Objected to.

10 THE COURT: Objection sustained.

11 MR. THOMSON: I move it be stricken.

12 THE COURT: There is nothing to strike be-
13 cause the witness has not answered. I sustained your
14 objection.

15 Q Mrs. Miller, you did not destroy the Humphrey
16 campaign records by yourself, did you?

17 A No, sir.

18 Q Did Mr. Chestnut give you any instructions
19 to destroy those records?

20 A No. I asked if I could.

21 Q And did he give you an affirmative answer to
22 your question?

23 A After he sought and received a legal opinion
24 he said I could clean house as I was asking him to do.

25 Q He gave you a green light to destroy the records?

1 nmjw 7 Miller - direct

2 MR. THOMSON: I am going to object to the
3 characterization of the answers.

4 THE COURT: Sustained as to form. Please
5 relax. Don't get excited.

6 Q Mr. Chestnut told you you could go forward
7 and destroy the records?

8 MR. THOMSON: Objected to as repetitious.

9 THE COURT: What did he say? Let's move on
10 as far as this aspect of the witness' testimony is concerned.

11 A Yes, sir, he has said he had sought a legal
12 opinion and I can go ahead and do as I requested, and that
13 was to clean out our offices of all files.

14 Q Did he specify for you, Mrs. Miller, which
15 records you should burn?

16 A No, I made that determination.

17 Q On your own?

18 A Yes.

19 MR. GOLD: No further questions.

20 THE COURT: Counsel?

21 MR. THOMSON: The defense has no questions,
22 your Honor.

23 THE COURT: The witness is excused.

24 (Witness excused)
25

mmjw 8

MR. BANNIGAN: The government calls Mr.
Henwood.

FRANCIS M. HENWOOD, called
as a witness by the Government, being first duly
sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BANNIGAN:

Q Mr. Henwood, how are you employed?

A I am a special agent of the Federal Bureau
of Investigation.

Q How long have you been employed by the
Federal Bureau of Investigation?

A Twenty years.

Q Where, sir, are you presently assigned to
duty?

A Minneapolis, Minnesota.

Q Now, sir, do you know a man by the name of
John Cochrane?

A Yes, sir.

Q Do you see him in the courtroom today?

A Yes.

Q So, I would like you to direct your attention,
please, to October 25 of 1974. We will focus on that date

2 please.

3 Did you have occasion on that date, to see
4 Mr. Cochrane?

5 A Yes, sir.

6 Q Where did you see him?

7 A I saw him in the law offices of Jack Chestnut
8 in the Midland Bank Building in Minneapolis.

9 Q Did you have occasion, sir, at that time
10 to give Mr. Cochrane something?

11 A Yes, sir.

12 Q What was that, sir?

13 A I gave him two photocopies of letters dated
14 in May, 1970, from Jack L. Chestnut to Bob Lilly.

15 Q Sir, I show you what has been marked Govern-
16 ment's Exhibits 6 and 7 in evidence and ask you whether
17 you have ever seen those documents before.

18 A Yes, these are copies, or this may be the
19 original, but they are the documents.

20 Q Now, sir, will you direct your attention,
21 please, to December 11, 1974. Focus on that day. Did
22 you have occasion at that time, sir, to meet Mr. Cochrane
23 again?

24 A Yes, sir.

25 Q Where did you meet Mr. Cochrane on that

1 mmjw 10

Henwood - direct

2 occasion?

3 A That, too, in the law offices of Jack
4 Chestnut in the Midland Bank Building in Minneapolis.

5 Q Was anybody else present on this occasion
6 besides yourself and Mr. Cochrane?

7 A Mr. Chestnut and Special Agent Everett Cook.

8 Q Did you have a conversation at that time
9 with Mr. Chestnut about why you were there?

10 A Yes.

11 Q What did you say to Mr. Chestnut and what
12 did he say to you?

13 A I explained to Mr. Chestnut that it was
14 desired by the special Watergate prosecutor to obtain
15 some handwriting samples and exemplars.

16 Q Did you, in fact, obtain such writings and --
17 exemplars?

18 A Yes.

19 Q Will you, to the best of your recollection,
20 tell the members of the jury what it was you obtained?

21 A I asked Mr. Chestnut for handwriting exemplars
22 of Jack L. Chestnut and two pages of Jack Chestnut, and
23 I believe two pages of the words "Payable to" with an
24 upswinging arrow following that and several pages of
25 miscellaneous writing.

1 mmjw ll Henwood - direct

2 Q Did Mr. Chestnut, in fact, give you these
3 exemplars and handwriting?

4 A Yes, he did.

5 MR. BANNIGAN: I ask these be marked collectively
6 next in order.

7 (Government's Exhibit 18 marked for
8 identification)

9 MR. BANNIGAN: I ask that these two pages
10 enclosed in a plastic container be marked next in order.

11 (Government's Exhibit 19 marked for
12 identification)

13 MR. BANNIGAN: I ask that these two pages
14 contained in this plastic container be marked as the
15 next for identification.

16 (Government's Exhibit 20 marked for
17 identification)

18 MR. BANNIGAN: And, finally, I ask that this
19 document consisting of two pages be marked next for
20 identification.

21 (Government's Exhibit 21 marked for
22 identification)

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2 Q Now, sir, I show you Government's Exhibits 18
3 for identification through 21 for identification and ask
4 you if you can identify those documents.

5 Have you looked at 18 for identification?

6 A Yes.

7 Q What is it?

8 A Three pages of miscellaneous writing and this
9 is the miscellaneous writing which Mr. Chestnut provided
10 on December 11.

11 Q Did you see Mr. Chestnut prepare those documents?
12 Did you see Mr. Chestnut write those documents?

13 A Yes.

14 Q Do any of those documents have a signature on
15 them?

16 A This document has a signature on it.

17 MR. BANNIGAN: I ask that this document be marked
18 Government's Exhibit 18A for identification.

xx 19 (Government's Exhibit 18A marked for identifi-
20 cation.)

21 Q Do you want to explain the other two documents
22 in 18 for identification?

23 A This document is miscellaneous writing contain-
24 ing the months of the year.

25 Q Written by Mr. Chestnut?

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2 A Written by Mr. Chestnut in my presence.

3 This document is miscellaneous writing of one
4 sentence written by Mr. Chestnut on December 11, 1974.

5 Q Now, sir, would you please glance at Government's
6 Exhibit 19 for identification and tell the jury what that is.

7 A These are two pages of the signature "Jack" which
8 was written by Mr. Chestnut at my question on December 11.

9 Q When you say it is the signature, did you ask
10 Mr. Chestnut to write "Jack" as he signs his name?

11 A Yes. These have spaces provided for writing of
12 the word "Jack".

13 Q Will you glance now please at 20 for identifi-
14 cation?

15 A These are exemplars of the signature of Jack L.
16 Chestnut which I asked him to write on December 11, 1974.

17 Q Did you see him write those.

18 A Yes, I did.

19 Q Sir, would you please glance at 21 for identi-
20 fication and tell the ladies and gentlemen of the jury what
21 that is?

22 A These are exemplars of the phrase "Payable to"
23 with an upswinging arrow, which I requested Mr. Chestnut to
24 write on December 11.

25 Q Did you observe him write those?

1 rke 3 Henwood - direct

2 A I did.

3 Q Now, sir, with respect to all the documents that
4 you have identified, how do you know today that these are
5 the documents that Mr. Chestnut actually wrote on and
6 signed?

7 A Initialed each page and put the date thereafter,
8 as did Special Agent Cook.

9 Q In your presence?

10 A Yes.

11 In the case of this document --

12 Q Referring to 18A for identification.

13 A I have signed that.

14 MR. BANNIGAN: Your Honor, the Government offers
15 18 for identification, 18A for identification, 19, 20 and
16 21 for identification, and I am showing them to counsel.

17 MR. THOMSON: Defense has no objection to these
18 exhibits.

xx 19 (Government's Exhibits 18, 18A, 19, 20 and 21
20 received in evidence.)

21 MR. BANNIGAN: May I circulate them, your Honor?

22 THE COURT: Yes.

23 MR. BANNIGAN: I have no further questions of
24 this witness, your Honor.

25 THE COURT: Any questions of the witness?

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Henwood - direct

276

MR. THOMSON: I have no questions.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Call your next witness.

MR. BANNIGAN: Your Honor, I can't remember the witness' name. May I go get him.

THE COURT: Yes.

THEODORE M. GRODER, called as a witness by the Government, having been first duly sworn by the Clerk of the Court, testified as follows:

DIPECT EXAMINATION

BY MR. BANNIGAN:

Q Mr. Groder, please tell the ladies and gentlemen of the jury what your present employment is.

A I am employed by American Express.

Q What are your duties for American Express?

A Custodian of records, supervisor of the card division.

Q Now, sir, at the request of the United States Government, did you and persons working for you or under you produce certain documents and turn them over to us?

A Yes.

MR. BANNIGAN: I ask that this series of nine

2 documents be marked Government Exhibit next in order.

xx

3 (Government's Exhibit 22 marked for identifica-
4 tion.)

5 MR. BANNIGAN: I ask that this two-page document
6 be marked Government's Exhibit 23 for identification.

xx

7 (Government's Exhibit 23, marked for identifi-
8 cation.)

9 MR. BANNIGAN: I ask that this two-page document
10 be marked Government's Exhibit 24 for identification.

xx

11 (Government's Exhibit 24 marked for identifica-
12 tion.)

13 MR. BANNIGAN: I ask that this six page series of
14 documents be marked Government's Exhibit 25 for identifica-
15 tion.

xx

16 (Government's Exhibit 25 marked for identifica-
17 tion.)

18 Q I am placing before you Government's Exhibits 22
19 for identification, 23 for identification, 24 for identi-
20 fication and 25 for identification and ask you if you can
21 identify them?

22 A Yes, sir.

23 Q What are they, sir?

24 A Exhibit 22, microfilm copies of records of
25 charges, descriptive billing and statements in the name of

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278

Jack L. Chestnut.

Q 23, sir, what is that?

A It is an application for an American Express Card with an account number of 041-211-3516 in the name of Jack Leland Chestnut.

Q Would you please look at Government's 24 for identification and tell us what that is?

A This is a microfilm copy of an application in the name of Jack L. Chestnut with an account number 081-211-351, in the name of Jack L. Chestnut.

Q Would you look at 25 for identification and tell us what that is?

A Application in the name of Jack L. Chestnut with an account number of 029-660-2121.

Q Sir, are these documents prepared and kept in the regular course of the business of American Express Company?

A Yes.

Q Is it the regular course of business of American Express Company that these records are maintained?

A Yes.

Q Are the entries that appear on these microfilms, are they entered on the microfilm at or about the time of the transaction reflected therein occurred?

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Groder - direct

2 A Yes.

3 MR. BANNIGAN: The Government offers 22, 23, 24,
4 25 for identification.

5 THE COURT: Show them to counsel.

6 MR. THOMSON: Your Honor, with respect to the
7 exhibits which have been identified that were taken for the
8 sole purpose of the signature, they contain a lot of extrane-
9 ous matter.

10 THE COURT: That is the only purpose for which
11 they are being offered?

12 MR. BANNIGAN: Yes.

13 MR. THOMSON: With that understanding, we wouldn't
14 have any exhibits.

xx 15 (Government's Exhibits 22, 23, 24 and 25 received
16 in evidence.)

17 MR. BANNIGAN: Your Honor, I would amend that in
18 one respect. They also are relevant to the time they were
19 executed and they are offered into the extent they reflect
20 the time that the documents were signed.

21 THE COURT: All right, they are so limited.

22 MR. BANNIGAN: I have no further questions of
23 this witness, your Honor.
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280

CROSS EXAMINATION

BY MR. THOMSON:

Q When were you requested to furnish these materials?

A Initially, a couple of weeks ago. I don't know the exact date and the last request was on Friday.

Q The first request that you had from the prosecution to give these exhibits whatsoever was two weeks ago?

A Approximately a few weeks ago. About two weeks ago.

MR. THOMSON: No further questions.

THE COURT: You may step down.

(Witness excused.)

MR. BANNIGAN: Your Honor, our next witness is a handwriting expert. We hope to qualify him as one and it will take five to ten minutes for him to set up his equipment. It is slides. I know it is quite early but that is the way he testifies, from slides and he will need a projector.

THE COURT: Suppose we take a recess a little earlier than our usual time.

(Recess.)

(In open court - jury present.)

MR. BANNIGAN: I ask that this document be marked

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Groder - cross

281

Government's Exhibit next in order. I will state for the record it is stipulated between the Government and defendant that the writing on that document is Mr. Chestnut's signature.

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(Government's Exhibit 26 marked for identification.)

MR. THOMSON: Defense has no objection, your Honor.

xx

(Government's Exhibit 26 received in evidence.)

MR. BANNIGAN: The Government calls Mr. McNally.

xx

J O S E P H P. M C N A L L Y, called as a witness by the Government, having been first duly sworn by the Clerk of the Court, testified as follows:

xx

DIRECT EXAMINATION

BY MR. BANNIGAN:

Q Mr. McNally, what is your present occupation?

A I am an examiner of questioned documents. That is more commonly referred to as a handwriting expert.

Q What is your present employment?

A Right now I am a consultant in the field of document identification for the New York City Department of Social Services. I am also in private practice as an examiner of questioned documents.

Q How long have you been in the Department of

Social Services and private practice?

A Three years.

Q Prior to this time, where have you been employed?

A I was a member of the New York City Police Department?

Q How many years?

A 31 years.

Q Are you now retired from the New York City Police Department?

A I am.

Q What was your rank at the time of your retirement?

A Captain.

Q As a member of the New York City Police Department, did you concentrate your activities in any particular area?

A I did. I spent the bulk of my time in law enforcement and forensic science, particularly that in the area of questioned document identification.

Q Could you please describe for the ladies and gentlemen of the jury your training and experience in the field of questioned documents identification?

A I first became involved with questioned document identification on assignment in the New York City Police

Laboratory, particularly the document section back in 1942.

I was a patrolman at the time. I started off as a trainee, worked with other experts in the field of questioned document identification. Read the leading books on the subject of document identification and worked with these experts in a case study approach of document identification, actually learning while doing the work.

I became involved in the examination, comparison of handwriting and typewriting and the processing of documents for alterations, eradications.

I remained in the laboratory as a detective, went through the various grades of detective, third, second, first.

I was promoted to sargeant in 1952. I was designated a supervisor in the Document Section of the laboratory. In 1957 on promotion to lieutenant, I became second in command of the laboratory and remained in the document section as a supervisor.

In 1965 on promotion to captain, I became a training officer in the Police Academy. I remained as a training officer until 1967 when I went back to the police laboratory as the commanding officer.

I remained until 1970 when I was reassigned and worked for the District Attorney's Office in New York County

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as a handwriting expert until my retirement from the job.

In all of these years, I have had a continuous connection with handwriting identification and questioned document identification, and have been involved in thousands of cases where handwriting or document identification of some type played a part.

1
2 Q Have you testified previously as an expert in the
3 field of questioned documents and have you been accepted as
4 qualified?

5 A I have.

6 Q Approximately how many times?

7 A About a thousand times.

8 Q What courts and for what quasi-judicial bodies have
9 you testified?

10 A I testified as an examiner of questioned documents
11 and been accepted as qualified in the Grand Juries for the
12 various counties of the City of New York, other Grand Juries
13 and counties in the metropolitan area, Grand Juries in the
14 Federal court system; I have testified in all the courts of
15 the judicial system of the State of New York, the Supreme
16 Court, the various lower criminal courts, the district courts,
17 the civil courts, the Supreme Court, the lower civil courts,
18 Surrogates Court, family court. I have also testified in
19 this area in questioned document identification in the
20 Federal court system in the Northern, Southern and Eastern
21 District; I have testified in military court-martials and
22 before disciplinary bodies of Federal, State and local
23 agencies, and have testified before various boards and
24 commissions and other investigative bodies in the State and
25 in the Federal area.

Q So, have you ever lectured on the subject of questioned document identification?

A I have.

Q Where, sir.

A I have lectured on this particular subject both in the graduate and the undergraduate school of Baruch College of the City University of New York, the undergraduate school of John J. College of Criminal Justice, in Rockland Community College, and before various military intelligence groups, before security groups of various types, credit cards, banks, retail establishments, before various local community groups and other types of investigative agencies.

Q Are you a member of any professional groups in this branch of forensic science?

A I am.

Q What are they?

A I am a fellow at the American Academy of Forensic Sciences, a member of the American Society of Questioned Document Examiners, a member of the International Association for Identification, a member of the Document Section of the American Society for Testing and Materials; I am a member of the Teaching and Training Division of the International Association of Chiefs of Police.

Q Have you been involved in training other personnel

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McNally - Direct

2 in the field of document identification?

3 A I have. During my long period of time in the
4 New York City Police Laboratory I was involved in the train-
5 ing of other people and other personnel in this particular
6 facet of forensic science; I have trained members of other
7 police departments, in Nassau County and Suffolk County,
8 and, as a matter of fact, some of the people who had trained
9 with me are now out in the field in document identification,
10 both in the local, state and federal agencies.

11 MR. BANNIGAN: Your Honor, I can continue, unless
12 counsel wants to stipulate that the witness is qualified.

13 MR. THOMSON: There is no dispute that the two
14 letters in question were signed by Mr. Chestnut, and we would
15 be so willing to stipulate, that those are the signatures.

16 MR. BANNIGAN: There is much more to the testimony
17 than that.

18 THE COURT: When you say two signatures, with
19 respect to which exhibits are you referring?

20 MR. THOMSON: I think it is apparently 6 and 7
21 of the two letters he is asking about.

22 THE COURT: Something else on the letters he may
23 wish to question about.

24 MR. BANNIGAN: Yes.

25 THE COURT: Can that be accepted, your stipulation?

1 Is that a stipulation that is offered, that the signatures
2 are those of the defendant?
3

4 MR. THOMSON: Yes. We have no dispute.

5 MR. BANNIGAN: On those two documents?

6 MR. THOMSON: Run "Payable to" with an arrow.
7 We don't dispute that that is Mr. Chestnut's writing.

8 MR. BANNIGAN: Will you stipulate as to the
9 witness' qualifications to testify as an expert if there
10 are other handwriting matters to be discussed?

11 MR. THOMSON: I have no objection to his qualifi-
12 cations.

13 MR. BANNIGAN: Thank you.

14 Q Sir, at my request did you make an examination and
15 comparison of a series of writings on questioned documents?

16 A I did.

17 Q Sir, I show you what has already been marked
18 Government's Exhibit 11 in evidence, Government's Exhibit 14
19 in evidence, Government's Exhibit 6 and 7 in evidence, about
20 which we have had the stipulation as to authenticity of the
21 signature. Now, sir, have you seen those documents before?

22 A I have.

23 Q And these are, I explained to you, documents that
24 contain signatures to be examined and compared with other
25 signatures?

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McNally - Direct

2 A You did.

3 Q I show you now, sir, Government's Exhibits 26 in
4 evidence, 22 in evidence, 18 in evidence, 19 in evidence,
5 20 in evidence and 21 in evidence.

6 Have you ever seen those documents, sir?

7 A I have.

8 Q And I requested, sir, did I not, that you examine
9 and compare the signatures on Government's Exhibits 11, 14,
10 16 -- excuse me -- 6 and 7, with the signatures and writings
11 on Government's Exhibits 26, 22, 18, 18A, 19, 20 and 21 in
12 evidence, did I not?

13 A You did.

14 Q As a result of your examination and comparision
15 did you come to a conclusion?

16 A I did.

17 Q Sir, what was that conclusion?

18 A That the endorsement Jack L. Chestnut on Exhibit 11,
19 the first name Jack on Exhibit No. 14, the name Jack, first
20 name Jack on Exhibit 6, and the name Jack, the first name
21 Jack on Exhibit No. 7 were written by the individual who
22 wrote the unknown handwriting on Exhibits 26, 22, 18, 18A,
23 19, 20 and 21.

24 Specifically, the identification of the writings
25 on Exhibits 11, 14, 6 and 7 was based on the signature which

1 is Exhibit 26, this particular signature, and the various
2 signatures Jack L. Chestnut on the exhibit marked
3 collectively Exhibit 22, that is, the signatures on the
4 American Express charges. There is a great deal of
5 variation between these signatures, Exhibit 26 and 22, and
6 the exemplar signatures on Exhibits 18, 18A, 19, 20 and 21.
7

8 Q You have brought some equipment with you, I believe,
9 which would help you explain to the jury how you came to
10 this conclusion? Is that correct?

11 A I have.

12 Q Sir, would you please proceed to explain to the
13 jury you arrived at this conclusion?

14 THE WITNESS: May I step down, your Honor?

15 Your Honor, may we lower the lights slightly, just the lights
16 in this area?

17 The signature which is on this screen, Jack L.
18 Chestnut, I have designated that as slide No. 1. That
19 particular signature is from Exhibit 26.

20 This is slide No. 2 (indicating). The signature
21 Jack L. Chestnut on the top is from Exhibit No. 26, and the
22 signature immediately below that, Jack L. Chestnut, is from
23 the so-called request exemplars, that is the signature from
24 Exhibit 18A.

25 In this particular case the signature on top from

1 Exhibit 26 and the signature from 18A, not a great deal
2 of similarity between these two signatures. You will
3 notice the signature on top has a great deal more freedom
4 of movement in it; it is written quite spontaneously, quite
5 carelessly; it flows across the written line, whereas the
6 signature down below it, Jack L. Chestnut, Exhibit 18A, it
7 is written in a very constrained, tight, cramped handwriting,
8 and you notice the variation in the J. The J on the top is
9 free flowing, written quite rapidly, and the construction of
10 the J immediately below it is an odd type; it is designed
11 quite obviously different from that above.
12

13 The second letter of the Jack L. Chestnut
14 signature on top is written again very carelessly, an open
15 type of "a," looks almost something like a "u" lying on its
16 side, and contrast that with the oval form of the "a"
17 immediately below it, much more carefully formed type of
18 "a."

19 On the top signature, moving to the "c," the "c"
20 is written again very carelessly, very sharply; it looks
21 something like an undotted "i."

22 Immediately below that, in the signature Jack L.
23 Chestnut, the "c" has a slight little hook or turn on it.

24 The "k" of the Jack L. Chestnut on the top
25 signature, the knot, the bottom formation of that "k" is not

1 fully formed; it is elided, slurred off, looks somewhat like
2 the letter "h."
3

4 Move down to the signature below that and the
5 "k" there has a knot, it is fully formed, and it has an
6 ending line coming up in a counter-clock-like formation,
7 quite different from the "k" of the top signature.

8 The L of the top signature looks somewhat like the
9 figure 2, whereas the L immediately below it on the bottom
10 signature looks like the standard type of L, again a varia-
11 tion in design.

12 The C of the top signature is quite plain; the
13 C of the bottom signature has a little loop formation
14 beginning it.

15 The "h" of the top Chestnut signature has a long
16 narrow loop, with the line going up tracing the line going
17 back, and quite different in design from the "h" of the
18 bottom signature.

19 The rest of the signature in Chestnut on the top
20 is written very carelessly, sort of a spontaneous writing,
21 if you would write your signature normally. The "s" is not
22 fully formed.

23 The "t-n-u-t," is not too much definition in the
24 middle part between the two t's, and the signature ends with
25 a flourish as the "t" comes back and swings over and we cross

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McNally - Direct

the "t's" with the one stroke, and that is quite different than its counterpart in the lower signature, for each of the letters "t-n-u-t" are written very carefully.

So in comparing and contrasting these two signatures, we have, number one, two different types of writing, one free flowing and simultaneous, the one on the top, one written very carefully and giving the appearance of having been written very slowly, that is, the signature on the bottom.

The various individual letters making up the signature, the J's are of different designs; the "a" is written in a different manner; "c" is written in a different manner; the "k" is written in a different manner; the L is different. The "C-h" combination on the top as opposed to the bottom, there is a variation between the two, and the ending of the Chestnut on the top is different, quite a great deal of variance between that and the signature immediately below it.

This is slide No. 2, and the Jack L. Chestnut signature on the top is from Exhibit No. 26, and the Jack L. Chestnut signature on the bottom is from one of the Jack L. Chestnut signatures from Exhibit 20.

THE COURT: Is the top one the American Express exhibit, just to get the record straight?

1 THE WITNESS: No, it is Exhibit 26.

2 THE COURT: What is 26?

3 THE WITNESS: 26 is this particular form here,
4 your Honor.

5 MR. BANNIGAN: That is the one we stipulated to,
6 your Honor, for the signature.

7 THE COURT: What was the bottom one?

8 THE WITNESS: The bottom signature is from
9 Exhibit 20.

10 MR. BANNIGAN: Which are the exemplars taken by
11 the FBI?

12 THE WITNESS: This is a signature from another
13 one of the -- I refer to it as request exemplars -- and you
14 can see from possibly memory of the previous slide that this
15 signature on the bottom falls in the same pattern.

16 The J is written in the same careful fashion, quite
17 different from the J on the signature immediately above it,
18 and the same holds true of the various letters that make up
19 that lower signature, the "a-c-k," the L, the "C-h-e-s-t-n-u-t,"
20 very carefully written and slowly written signature, at odds
21 with the writing pattern of the signature immediately above
22 it.

23 Again here is another signature, Jack L. Chestnut,
24 from Exhibit 20, from a different area. It is the seventh
25

1 and eighth signature on the sheet. These are different
2 signatures than the Jack L. Chestnut signatures I described
3 before on the lower signatures, but they show again the
4 same pattern of writing of Jack L. Chestnut, and if you will
5 note in the writing of the lower K, that line starting the
6 K is a very timulous line. The lower signatures in each
7 of these cases has been written very carefully and very
8 slowly and quite at odds with that smooth writing pattern
9 immediately above them.
10

11 These are the signatures again, the top signature
12 of that particular slide, which is slide No. 5, is from the
13 form Exhibit No. 26, and the first names Jack are from the
14 exemplar writing taken by the FBI man, Exhibit No. 19, and
15 in the writing of that name Jack, on the lower portion of
16 that screen you will note the variation between that writing
17 and that Jack and the writing of Jack in Exhibit 26, the
18 signature immediately above it.

19 This is a consistent pattern.

20 These are signatures, Jack L. Chestnut, on the
21 bottom from Exhibit 20. These are the exemplars written for
22 the FBI agent, and the signature Jack L. Chestnut on the top
23 is the signature on Exhibit No. 26. So that there is a
24 pattern throughout these lower writings, these so-called
25 exemplar writings. All of these signatures are written

pretty much in the same fashion. There is some slight variation among them, but if you remember the reference slides that you have seen, that the Jack L. Chestnut in each case has been written very carefully, very slowly, and it had that very odd characteristic type of J, which is quite different from the J as written on the Jack L. Chestnut on the top part of that slide.

Q These are the signatures Jack. The top signature is from the letter designated Exhibit 6; the middle signature is from the exhibit designated as Exhibit 7; and the lower signature, Jack L. Chestnut, is from the signature designated 26, which is a signature that was stipulated to.

In these cases you will note that in all three of these signatures, the top, the middle and the bottom, that all of them have that very free flowing spontaneous character; they all fall into the same pattern; they are written very, very quickly.

The J's have the same basic construction. The "a's" have the same basic construction. The "c" in each instance is written like an undotted "i," and the "k," the top "k," the entire right-hand portion of the "k" is elided or slurred off.

The second signature there, we have a "k" where the knot of the "k" is just a line running out to the right, a

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296a

variation in the writing pattern, and the bottom "k" from
Exhibit No. 16 we have a "k" which is slurred off, elided;
it looks something like the letter "h."

(Continued on next page)

1 This is slide no. 8 and the top signature, this
2 is a photo reproduction of that particular signature there.
3 Apparently the document which is designated as Exhibit No. 6
4 has been processed chemically and what has happened, the
5 part of the ink disappeared. This particular reproduction
6 was most likely made beforehand, so this is a better repre-
7 sentation insofar as the slide is concerned of the signature
8 on Exhibit no. 6, the letter designated Exhibit No. 6.

9 To go back to that previous slide, the same docu-
10 ments are involved, Exhibit 6, Exhibit 7 and the signature
11 on the stipulated exemplar, Exhibit 26.

12 This is a signature on Exhibit No. 6. That is
13 on the top and immediately below that is the endorsement on
14 the check, Jack L. Chestnut. That check exhibit is designa-
15 ted as Exhibit number 11 and in both of these signatures,
16 you will notice that very quick fast way of writing the
17 Jack". It is a very fast method of writing and it is
18 consistent in these particular documents.

19 The "J"'s fit in, the A-C combination actually
20 being indecipherable and out of context and the peculiar
21 line on the K, T/K.

22 In this particular slide which I have designated
23 as slide number 10, the top signature "Jack" is from Exhibit
24 no. 7 and the signature "Jack" immediately below that is from
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McNally - direct

298

an exhibit designated as No. 14, and you will note in these two documents where we have that signature "Jack" how very quickly they are written. They are virtually duplications, one of the other. There is a slight variation in the ending part of the K but the J's fit into the same pattern.

The slant of the writing is the same in both instances. The proportions of the letters one to another. The design of the individual letters, they match top and bottom. This is a much different writing pattern than the writing pattern found on the exemplars taken by the FBI agent.

In this particular exhibit, the top signature is from the letter dated May 12, 1970. That is the signature "Jack" on Exhibit No. 7 and the signature immediately below that is the signature Jack L. Chestnut on one of the American Express credit charges which is designated Exhibit No. 22.

Q Mr. Witness, could you give the date on that charge, if it is on there. You can't see it there. Can you locate it?

A This is dated March 26, 1970 and that little red marking on the right-hand side, I placed on these American Express charges in order to follow them on the slide.

As a matter of fact, these particular markings

are still on documents here, Exhibit No. 22 and that is the signature here, slide No. 11.

The date of that particular charge was March 26, 1970 and it is in the amount of \$57.07. These may be a little difficult to see. I examined and compared the original photo reproductions. They are slightly reduced in size and they do not, of course, project very well, so actually you have to strain somewhat to see the writing patterns on these charges.

As a matter of fact, some I could not utilize because they are barely decernable, but in this particular case, I think you can discern that the writing pattern of the Jack L. Chestnut on the American Express charges, that the J-A-C that we have in the front part there, is written in the same fashion as the "Jack" on the slide of the signature immediately above it.

That same free flowing, careless approach to the writing "Jack" and if you will note out to the right in the writing on the American Express charge, the writing of "Chestnut". This is the way we find Chestnut written on the document which is stipulated to, Exhibit 26 with that ending formation of the T where the T comes back and the writer crosses both up strokes of the T.

In this case what I have done, the upper portion

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McNally - direct

2 of the two "Jacks" that you see up there, I have designated
3 this as slide D for David.

4 The top signature, "Jack" is from the letter
5 dated May 7 of 1970 and the signature Jack immediately
6 below that is the letter dated May 12, 1970.

7 Respectively, the top signature from Exhibit
8 No. 6, the second signature from Exhibit No. 7 and the signa-
9 ture on the American Express Card there from Exhibit 22,
10 the charge dated March 26, 1970 and in all three of those
11 signatures where we have the writing "Jack" which is compara-
12 ble, the "Jack" matches in the writing pattern and the
13 individual design of the various letters that make up those
14 particular first names.

15 The top slide is the same. I designated this as
16 slide No. 12 and the top writing is from the letters design-
17 ated 6 and 7 and this particular American Express charge I
18 have put a numeral on it, number 2. This was dated
19 March 23, 1970 for \$8.51. A part of the writing is hard to
20 discern but in the writing pattern -- it is discernible
21 the writing of the J, the writing of the K and the last
22 part of Chestnut on that American Express charge.

23 We find the patterns of that exist as, say in
24 Exhibit 26, but do not exist in the exemplars taken by the
25 FBI man. This particular writing pattern on this particular

American Express charge matches the writing pattern of the 2 "Jack" signatures on Exhibits 6 and 7.

This is slide designated as slide 13 and this is an American Express charge. I designated it as No. 3, that little red 3 there. It is dated March 28, 1970 and in the amount of \$197.40. The signatures of Jack L. Chestnut on this American Express Credit charge is consistent with all of the other American Express Credit charges in Exhibit No. 22 and is consistent with the writing of "Jack" on Exhibit No. 6, Exhibit No. 7 and again, the Jack in Jack L. Chestnut and L Chestnut, that entire signature on Exhibit 26, the so-called stipulated exemplar.

This is slide number 14. This is American Express credit charge. I have designated it as No. 4, that little red 4 you see there. This is also dated March 23, 1970 in the amount of \$165.90. This is a pattern of writing here, the Jack L. Chestnut which is consistent with all of the other American Express charges, with Exhibit 26, with "Jack" on Exhibits 6, 7, 11, and 14 and dissimilar from the "Jack" in the Jack L. Chestnut as written on the exemplars taken by the FBI man.

O Mr. Witness, do you have any exhibits contrasting Jack -- it has been stipulated that the signature, the first two signatures that appear on your screen are in fact those

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McNally - direct

2 of Mr. Chestnut. Do you have any slides which compare those
3 with the exemplars?

4 Would you explain that one you have just shown?

5 A The lower slide that I have here, the "Jack" of
6 course is another slide, actually of Exhibit No. 6. It is
7 slightly enlarged and the lower portion of that particular
8 slide is the endorsement on the check which has been design-
9 nated No. 11 and you could see that writing pattern here
10 of the check which fits in with the writing pattern on the
11 Jack L. Chestnut on No. 11.

12 This particular slide, the signatures Jack L.
13 Chestnut on the lower slide, the last two signatures of
14 Jack L. Chestnut are from Exhibit No. 20 and I referred to
15 these previously. These are part of the exemplar writings
16 taken on behalf of the FBI agent and they contrast with
17 the signature Jack L. Chestnut on Exhibit No. 26, the stipu-
18 lated exemplar and of course the contrast with the two signa-
19 tures Jack L. Chestnut on Exhibit No. 6 and 7 where we have
20 the Jack on Exhibit No. 6, and the Jack on Exhibit No. 7,
21 the Jack on the stipulated exemplar, No. 26, all fitting
22 into the same pattern written very quickly, very fluently
23 and the basic pattern of writing of all three of those
24 Jacks consistent with one another.

25 We come down below to the two signatures from

the questioned exemplars, Exhibit 22 and we have an entirely different writing pattern.

I did specifically base my identification mainly on the exemplar writing which was designated as Exhibit No. 22. Those are the signatures Jack L. Chestnut on the various American Express credit charges and also the signature Chestnut which appears on the stipulated exemplar, No. 26.

The writings on the Exhibits designated as 18, 18A, 19, 20 and 21. Those particular exhibits are all consistent one with the other. They were taken, I understand by the FBI agent and those particular exemplars taken by the FBI agent do vary markedly with the other exemplars.

That is the exemplar writing on Exhibit No. 22, the American Express credit charges and as a matter of fact, they look like they were written by two different people.

Q Does that conclude your explanation?

A It does.

MR. BANNIGAN: No further questions of this witness.

CROSS EXAMINATION

BY MR. THOMSON:

Q Mr. McNally, when did you make your examination, sir?

A I made my examinations over the weekend and right

up until last evening.

Q This last weekend?

A That is right.

Q You talked about signatures, some being free flowing, others being more cramped and slow, is that correct?

A That is right.

Q It is a fact, is it not, Mr. McNally, when someone is writing something rather casually, they will write it rather free flowing and fast?

A That is true.

Q When you are to write something more deliberate, you write slower and more precisely; isn't that true?

A You may, yes.

Q In other words, the contrast, say, if someone took me into a room with two FBI agents and the agents said, okay, Thomson, we want you to walk for us. Wouldn't there be a natural tendency for me to walk more slowly, deliberately, precisely --

MR. BANNIGAN: Objection.

THE COURT: He didn't finish his question.

Q Then if I was rushing down to the corner drug store or something?

MR. BANNIGAN: Objection.

THE COURT: Overruled.

1
2 A You may, yes.

3 Q Isn't it also the same that if someone is called
4 in and they are requested, in other words, to write for some-
5 one, to do it deliberately and their mind is more focused
6 on the writing, isn't there more of a tendency to be more
7 precise and slow and accurate with your writing than when you
8 do it without thinking such as signing the letter?

9 A There generally would be some tendency to be a
10 little more careful about what you are doing.

11 Q As a matter of fact, a questioned document
12 expert like yourself would rather determine a signature from
13 non-requested exemplars?

14 A Well, so-called spontaneous writing actually
15 gives you a better picture of an individual's handwriting.

16 Q A requested exemplar would be the least desirable,
17 would it not?

18 A It sometimes is, yes.

19 Q For instance I noticed in going through the
20 slides, and perhaps you could do this for me if you step
21 down, Mr. McNally, and I believe there is an exhibit you
22 referred to, a check, Exhibit 6 or 11.

23 A Exhibit 11.

24 Q The Bob Lilly check.

25 A Yes.

1 rke 10

McNally - cross

2 Q The middle signature being focused on the screen.
3 That comes from what exhibit?

4 A Exhibit No. 26.

5 Q And that is an exhibit that it is stipulated
6 was Mr. Chestnut's signature?

7 A So I understand.

8 Q Would you go to the slide that reflects Mr.
9 Chestnut's signature on Exhibit 11, which I believe might be
10 slide No. 6 and contrast it with that slide in the middle?

11 Do I make myself clear?

12 A You do.

13 The second signature is the signature Jack L.
14 Chestnut on the check, the endorsement.

15 Q This would be Mr. Chestnut's signature on the
16 check?

17 A That is right.

18 Q This would be the one written above the signa-
19 ture blank here?

20 A That is from Exhibit No. 26, the stipulated
21 exemplar.

22 Q Comparing this signature of Mr. Chestnut's with
23 this signature, this one here seems to be more carefree,
24 free flowing than this one.

25 A Extremely careless.

1 rke ll McNally - cross

2 O This was probably something that was written
3 on the back of a check in a hurry.

4 A It was, apparently.

5 Q In contrast with something that was probably
6 written a little more deliberate on a piece of paper over
7 the subject's name, isn't that correct?

8 A It is written more deliberately but at the
9 same time it still has the essential characteristics that
10 we find in the check endorsement, that peculiar formation of
11 continuing on with the T to make a back stroke.

12 Q Here we don't even have the two T's.

13 A He has deleted the last part of his signature.

14 MR. THOMSON: No further questions.

15 MR. BANNIGAN: No further questions.

16 THE COURT: You may step down.

17 (Witness excused.)

18 MR. BANNIGAN: The Government calls Mr. Rupert.

xx 19 E L I Z A B E T H R U P E R T, called as a witness
20 on behalf of the Government, having been first duly
21 sworn by the Clerk of the Court, testified as follows:

xx 22 DIRECT EXAMINATION

23 BY MR. BANNIGAN:

24 Q Mrs. Rupert, how are you employed?

25 A I am employed by Bankers Trust, Authority

1 rke 12

Rupert - direct

308

2 clerk.

3 THE COURT: Authority clerk?

4 THE WITNESS: Yes. I keep records for the bank.

5 THE COURT: You call it an authority clerk?

6 THE WITNESS: Yes.

7 THE COURT: I have heard of the housing authority,
8 the court authority.

9 Q How long have you been so employed?

10 A 27 years.

11 Q At my request, did you produce certain records
12 from Bankers Trust Company?

13 A Yes.

14 MR. BANNIGAN: I ask that this document be
15 marked.

xx 16 (Government's Exhibit 27, marked for identifica-
17 tion.)

18 MR. BANNIGAN: I ask that this five-page document
19 be marked Government's Exhibit 28 for identification.

xx 20 (Government's Exhibit 28, marked for identifi-
21 cation.)

22 Q Mrs. Rupert, I show you Government's Exhibit 27
23 and 28 for identification and ask you if you can identify
24 those.

25 A Yes. Those are the records I brought. This is

2 a deposit ticket and this is a statement.

3 Q The records that you brought, are they records
4 kept in the ordinary course of the business of Bankers
5 Trust Company?

6 A Yes.

7 Q Are they maintained in the regular course of
8 business by Bankers Trust Company?

9 A That is right.

10 Q Are the entries that are reflected on these
11 documents contemporaneous with the transactions reflected
12 there?

13 A That is right.

14 Q Would you please explain to the ladies and gentle-
15 ment of the jury what these documents show?

16 A This is a deposit ticket. It shows listings of
17 deposits that are made on that day in the bank by customers
18 and this is a statement which shows the date, the amount of
19 the deposit on that day.

20 Q Is there some indicate as to who the customer of
21 the bank was.

22 A Yes.

23 Q Who was the customer?

24 A Lennen & Newell.

25 Q They had an account at your bank?

1
2 A That is right.

3 Q Does the deposit slip show a deposit of any
4 amount of money such as \$6,000?

5 A Yes, it shows a \$6,000 deposit.

6 Q When was that deposit?

7 A June 22, 1970.

8 Q Madam, have you brought another deposit record
9 with you?

10 A No, I did not.

11 Q Were you requested to see if you could locate
12 a second deposit record?

13 A Yes, I was.

14 Q Did you conduct a thorough search of the records
15 of the bank?

16 A Yes, I did.

17 Q Were you able to locate such a record?

18 A No, I couldn't.

19 Q Would you please explain what Government's
20 Exhibit 28 is?

21 A It is a statement, a bank statement that a
22 customer receives.

23 Q The customer in this case is who?

24 A Lennen & Newell. It shows his deposits for
25 certain days and the amounts.

Q Does this deposit record reflect the deposit of that \$6,000 check?

A It reflects a deposit of that date, the amount on that date.

Q Total deposit?

A Yes.

Q Which would include the check?

A Right.

MR. BANNIGAN: The Government offers 27 and 28 for identification.

MR. THOMSON: Defense has no objection.

(Government's Exhibits 27 and 28, received in evidence.)

Q Mrs. Rupert, would you please look through 28 for identification and mark with this pen where the deposit reflected on 27 for identification is reflected?

A Yes.

Q You have indicated with my pen the figure \$91,155.28, is that correct?

A Yes.

Q The date June 22?

A That is correct.

Q I ask you to look at Government's Exhibits 3 and 4 in evidence and ask you whether by examining those docu-

ments and in your experience as an authority clerk, when those checks were deposited in an account with Bankers Trust?

A Yes. There is a deposit stamp on the back of it. It says Bankers Trust, Lennen & Newell general account and it is a Bankers Trust stamp.

Q Are those official stamps maintained at Bankers Trust?

A Yes.

Q Would you look at the other check and tell us whether that one was similarly deposited?

A Yes. It has the same stamp.

Q Which of those checks is reflected in Government's Exhibits 27 and 28?

A This one.

Q Referring to Government's Exhibit 4 in evidence.

A Yes.

Q And the similar records relating to check number, Government's Exhibit 3 for identification, you were unable to locate?

A That is right.

MR. BANNIGAN: I have no further questions of the witness, your Honor.

MR. THOMSON: The defense has none, your Honor.

1 rke 17

Rupert - direct

2 THE COURT: You were with Bankers Trust Company.
3 Is that here in New York City?

4 THE WITNESS: That is correct.

5 THE COURT: And those deposits were made in New
6 York City?

7 THE WITNESS: That is right.

8 THE COURT: You are excused.

9 (Witness excused.)

10 MR. PANNIGAN: The Government offers at this
11 time a certified copy of an official record of the State of
12 Kansas attesting to the fact that Associated Milk Producers
13 was in fact a corporation.

14 It is signed by the Secretary of State and his
15 signature is authenticated by the Governor of the State of
16 Kansas.

17 THE COURT: Show it to opposing counsel.

18 MR. THOMSON: Your Honor, I would offer a legal
19 objection for the record, that the certification merely
20 states that Associated Milk Producers, Inc. is regularly
21 and properly organized corporation under the Laws of the
22 State of Kansas. It does not state what laws and I think
23 it would be properly a legal argument to the Court.

24 THE COURT: Your objection is noted and the
25 document is received.

1 rke 18

Rupert - direct

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2 (Government's Exhibit 29, received in evidence.)

3 MR. BANNIGAN: Perhaps it would save time if I
4 read not the certification on the front from the Governor,
5 but the second document and I will do it briefly.

6 (Government's Exhibit 29 in evidence read to the
7 jury.)

8 MR. BANNIGAN: Your Honor, the Government rests.

9 THE COURT: Members of the jury, I think we will
10 take another midafternoon recess. You may go inside.

11 (Jury leaves the courtroom.)

12 THE COURT: All right, Mr. Thomson.

13 MR. THOMSON: If it please the Court, Mr. Nordby
14 will argue the motion for a judgment of acquittal.

15 MR. NORDBY: Before touching on that, your
16 Honor, may I move or renew the motion that was made to strike
17 the references to the other alleged misconduct subject to
18 the Government's brief as previously discussed in Chambers
19 and I won't reargue it at this time but I would move to
20 reargue that for the same reason previously stated on the
21 ground that the Government at no time subsequent to the
22 Government's initial ruling, failed to provide anything by
23 way of additional foundation.

24 THE COURT: Does the Government want to be heard
25 in opposition?

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2 MR. BANNIGAN: Yes, your Honor. The Government
3 offered these other acts from the question of wilfulness,
4 the intent of the defendant. It is evidence which your
5 Honor received and in doing so, instructed the jury it was
6 received for the limited purpose that the jury could con-
7 sider it to determine the defendant's conduct in this case.
8 Cases in this Circuit and cases cited in our memorandum of
9 law clearly hold that in an appropriate case such as this,
10 evidence of misconduct is received as long as it is not
11 received solely for the purposes of establishing the defend-
12 ants propensity to commit crimes. Here it was not received
13 for that purpose. I believe it was properly received. I
14 believe your Honor gave the proper cautionary instruction
15 to the jury. I have nothing further to say.

16 THE COURT: Proceed with your argument.
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2 MR. NORDBY: May I just add to that point, your
3 Honor, again. Mr. Bannigan misunderstands me. My argu-
4 ment is that there is no showing that this misconduct was
5 unlawful at all. The other episode, therefore, they can't
6 come up with other unlawful conduct.

7 My second motion would be related to this
8 restraint, these conclusions by Mr. Lilly to the effect that
9 those contributions violated some section or other. And
10 there is no showing that they did and there is no showing
11 that he was qualified as a legal expert to draw that
12 conclusion.

13 THE COURT: As I recall it, there was no objection
14 made at the time when the questions were put to him on this
15 subject, and, indeed, my recollection is that Mr. Thomson
16 cross-examined him quite a bit on the same subject. Motion
17 denied.

18 MR. NORDBY: My recollection is that there had
19 been an objection, but your Honor's memory is perhaps better
20 than mine. But the record will show.

21 Your Honor, the defendant moves for a judgment of
22 acquittal at this time for the following reasons. The
23 pretrial motion was argued at some length, and your Honor
24 gave a great deal of distinction between an expenditure and
25 a contribution. In our requested instructions we have asked

1 mmjw 1

2 the Court to charge the jury that an essential element
3 of this offense is that the government must prove beyond
4 a reasonable doubt that the payments in question were
5 contributions rather than expenditures, because there
6 is no crime as to an expenditure.

7 I submit, first, that there is no evidence
8 whatever in this record, one upon which the jury can
9 base a determination that the payments attributed to
10 Mr. Chestnut were contributions. The government has
11 presented no evidence under which the jury could arrive
12 at the determination under Section 591 these were con-
13 tributions, rather than expenditures, and a judgment of
14 acquittal is required because of that failure of proof
15 alone.

16 I have other points, your Honor. Perhaps
17 it would be better for Mr. Bannigan to respond to these
18 as I make them. Whatever your preference is?

19 MR. BANNIGAN: Your Honor, I address myself
20 to the subject matter which I did not address myself to,
21 and that is that counsel's first grounds on the motion
22 for a judgment of acquittal. It is my recollection that
23 Mr. Lilly on occasions advised Mr. Chestnut that these
24 were AMPI or A M P I contributions. It has been clearly
25 stated here that A M P I stands for Associated Milk Producers,

1 mmjw 2

2 Incorporated, and the government have proved both through
3 Mr. Lilly's testimony and through the documents signed
4 by the Secretary of State in Kansas that it was, in fact,
5 a corporation. He had notice that they were corporate
6 contributions, and he received them. That is sufficient.

7 Moreover, on their face, your Honor, we contend
8 that the documents were illegal and he had a duty to look
9 behind those documents and not to accept them. The face
10 of the documents merely compounds his knowledge, your
11 Honor. And with respect to the question of whether this
12 is a contribution or an expenditure, your Honor, you have
13 ruled that it is a contribution and that is the end of
14 the matter.

15 MR. NORDBY: I believe the previous ruling
16 on this issue was that the indictment on its face was
17 sufficient to charge an offense. That is a great deal
18 different from proof beyond a reasonable doubt. The
19 statute provides with less clarity than might be desired
20 two separate and distinct categories of payments. -- con-
21 tributions and expenditures. It is a crime to receive
22 a contribution and it is a crime to receive an expenditure,
23 and this man's fate rests right now on what these payments
24 were. That, certainly, is a fact question for the jury.
25 It would appear that your Honor's pre-trial hearing has

a bearing on whether it is a fact issue on the question of proof beyond a reasonable doubt.

So you are to consider it in the present context of the case.

THE COURT : I will make a ruling on this now and it will also apply to your request for instructions. The indictment here charges the receipt and acceptance of a contribution or causing the receipt and acceptance of a prohibited contribution. Upon the evidence there is no basis for any instruction that the \$12,000 may be considered as an expenditure by AMPI.

Your request for an instruction with respect to an expenditure is no different than the instance of a defendant who requests the Court to charge entrapment or an alibi defense when, in fact, there is no evidence to support it. Accordingly, that motion is denied. And that is also applicable to the requested instruction on the subject. You can't call that which is black, white and ask the jury to consider something which is not a fact.

Go on to your next point, please.

MR. NORDBY: I request the Court not to read the definition from 591.

THE COURT: I will not read the whole section,

1 mmjw 4

2 when only a portion of that applies. You may just as
3 well charge that a contribution by a union is prohibited.

4 Question has nothing at all to do with this case.

5 The charges are alleged illegal contribution
6 by a corporation. The statute also refers to union,
7 but I am not going to instruct the jury as to that. I
8 am going to give a very simple charge, at least, I hope
9 it will be simple, within the framework of the indictment.

10 MR. NORDBY: There is no evidence whatever
11 of a union connected with this case, but I believe there
12 is evidence of a payment by AMPI.

13 THE COURT: The fact that a check is drawn
14 does not make it an expenditure. The evidence in the
15 case is perfectly clear. It will only serve to confuse
16 the jury and inject an issue that is not in the case.

17 MR. NORDBY: Next, your Honor, we would move
18 for a judgment of acquittal on the grounds that it has
19 not been shown, that a deliberate, knowing, conscious
20 attempt with evil motive to violate the law has not been
21 shown. That is an essential element of this crime, and
22 there simply is no evidence sufficient to submit to the
23 jury on that element.

24 As I understand it, my recollection of the
25 evidence is that Mr. Lilly spoke to Mr. Chestnut to the

mmjw 5

effect that AMPI in the generic sense would be paying some of the campaign bills to Lennen & Newell. That was discussed. I don't think that anything in Mr. Lilly's testimony or anything else in the government's evidence suggests to that degree of probability that could be submitted to the jury on a matter as serious as this, that Mr. Lilly says that these are illegal corporate funds out of Associated Milk Producers, Inc. as opposed to TAPE.

The evidence also shows there was never any discussions of TAPE, that Mr. Lilly was functioning as a representative of TAPE, which, of course, was the legitimate political arm of Associated Milk Producers at that time. There is no evidence that Mr. Chestnut ever actually saw, handled, had any awareness of the payments that were made in the form of checks.

THE COURT: Whom were the checks sent to in the first instance?

MR. NORDBY: They were mailed to his name and address, your Honor.

THE COURT: When you say "him" to whom are you referring?

MR. NORDBY: Mr. Chestnut. I believe the testimony was that they were mailed to him.

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2 THE COURT: Don't the checks on their face
3 bear the name of AMPI Incorporated?

4 MR. NORDBY: Yes, sir.

5 THE COURT: It is your suggestion that Mr.
6 Lilly was under some kind of a duty to tell the defendant
7 that these checks were illegal and his receipt or accept-
8 ance of them is contrary to law? I don't quite follow
9 your argument.

10 MR. NORDBY: Yes, I certainly think he ought
11 to have done that. He would not have been here had he
12 done that, had he been candid in his dealings. That is
13 not the issue I raise.

14 The suggestion is the government has not
15 shown that Mr. Chestnut was ever aware that they payments
16 to Lennen & Newell were made on Associated Milk Producers,
17 Inc. funds.

18 THE COURT: That is the point I am asking
19 you. That is a jury fact, is it not, the question of
20 wilfulness?

21 MR. NORDBY: Yes.

22 THE COURT: Wilfulness as to what?

23 MR. NORDBY: I am arguing, your Honor, that
24 the government has failed to produce enough evidence to
25 go to the jury on that question. That is a fact question.

1 mmjw 7

2 I am suggesting no prima facie evidence of
3 wilfulness on Mr. Chestnut's part and, therefore, wilfulness
4 cannot go to the jury. Wilfulness is rather of high
5 degree. I don't know what instruction the Court will
6 give, but wilfulness is more than mere consciousness,
7 it is beyond an intention, it is a deliberate, knowing,
8 purposeful violation of law, an intention of violating
9 the law.

10 THE COURT: May the jury drawn an inference
11 that the checks were received by the defendant?

12 MR. NORDBY: That is a permissible inference.

13 THE COURT: In two instances I believe on
14 their face their bear the legend AMPI Incorporated. Isn't
15 that sufficient to suggest to a person that corporate
16 funds were being reflected by the checks themselves? - I
17 am suggesting to you, if you received a check indicating
18 on its face it is a corporate check, wouldn't a trier of
19 the facts be justified in drawing the inference that the
20 funds are corporate funds?

21 MR. NORDBY: Yes.

22 THE COURT: Then, of course, isn't that an
23 issue of fact?

24 MR. NORDBY: I am at the other step, the
25 previous step. I believe from viewing a check as corporate

1 mmjw 8

2 funds, certainly the inference is there if a person views
3 it. There is no evidence that Mr. Chestnut saw these
4 checks. The only evidence is they were mailed to his
5 address.

6 THE COURT: What do you do with the letters
7 in reference to those checks?

8 MR. NORDBY: I don't think you will find
9 any reference to those checks in the letters, your Honor.
10 They refer to invoices and to the transactions in general.
11 I believe you will find no reference whatever to the checks,
12 or any evidence, I believe, in this case that Mr. Chestnut
13 was ever aware of the aspect of those checks that your
14 Honor emphasizes. They said AMPI quite conspicuously
15 on them, and there is the joint signature, and it was our
16 practice to return the checks to this man. It happens
17 to be a different check.

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2 THE COURT: I just want to make sure I do under-
3 stand your position on this. The two letters in evidence,
4 6 and 7 which are now conceded were signed by the defendant
5 make a reference -- well, in the one instance,
6 the letters refer to the bills and one of them says enclosed
7 is the correct billing for Lennen & Newell and the billing
8 is addressed to Associate Milk Producers, Inc.

9 Can you separate these letters and the billings
10 from the testimony of the witness on this subject?

11 MR. NORDBY: The testimony of Mr. Lilly?

12 THE COURT: Yes.

13 MR. NORDBY: It is true the letters were
14 addressed to that address but they were addressed to Mr.
15 Lilly. His testimony was he discussed these matters with
16 Mr. Chestnut, that the Association would pay some bills and
17 the letters are simply on their faces, transmittal of
18 invoice or whatever toward that end. That doesn't raise the
19 inference that Mr. Chestnut knew that the source of the
20 funds would be from the illegal as opposed to the legal part
21 of AMPI. AMPI it seems to me, was clearly used by all of
22 the witnesses here as the overall entity, not as AMPI
23 excluding the legal political aspect and that is the
24 crucial issue which is raised by the Government's case.

25 There is no question here that Associated Milk

1 rke 2

2 Producers Inc. paid some Lennen & Newell bills. The question
3 is did Mr. Chestnut wilfully arrange that out of corporate
4 funds as opposed to legal political funds of which there
5 were large amounts available, which he had every reason to
6 know there were large amounts available which so far as
7 I know he had no reason to suspect or believe or apprehend
8 would not be used.

9 THE COURT: Does that conclude your argument on
10 that?

11 MR. NORDBY: Yes, unless you have questions.

12 MR. BANNIGAN: Your Honor, very briefly. I
13 suggest that taking all of the documentation in this case,
14 specifically the letters to which your Honor referred, the
15 invoice, the faces of the checks, the testimony of Mr. Lilly
16 and his conversations with Mr. Chestnut, personal conver-
17 sations, that they point to nothing but the fact that AMPI,
18 the corporation, was going to pay and specifically, I suggest,
19 the inference is that TAPE had nothing whatsoever to do with
20 this case or with this transaction.

21 Moreover, your Honor, to prove that, we have
22 put into evidence the documentation filed with the House
23 of Representatives which shows quite clearly there was
24 never a TAPE payment in the year 1970 to Mr. Humphrey's
25 campaign.

1 rke 3

2 I think your Honor, that the proof here over-
3 whelmingly establishes Mr. Chestnut's knowledge. I would
4 be shocked to find that that element had not been satisfied.

5 I have nothing further to say.

6 MR. NORDBY: If I could just respond. I think
7 Mr. Bannigan makes here -- the error he makes, he assumes
8 that Mr. Lilly, contrary to what Mr. Lilly testified, that
9 Mr. Lilly informed Mr. Chestnut these are going to be AMPI
10 funds, we have an elaborate system of reimbursing our lawyers.
11 Mr. Chestnut did not know, he had no idea what was going on.
12 He knew that AMPI was a milk cooperative, that it worked with
13 Humphrey, it had legal funds available to contribute.

14 He said he was going to make an AMPI contribu-
15 tion. There is no evidence that shows even to a prime
16 facie degree that Mr. Chestnut knowingly accepted illegal
17 funds.

18 MR. BANNIGAN: For a second time, I guess I am
19 wrong. Counsel however has answered any argument I could
20 make by stating that Mr. Lilly told Mr. Chestnut it was an
21 AMPI contribution. I have nothing further to add.

22 THE COURT: He didn't tell him it came from the
23 political arm organization. That was also the testimony.

24 MR. NORDBY: I submit --

25 THE COURT: All it comes down to at this point

1 rke 4

2 is for me to decide whether or not there is an issue of
3 fact to go to the jury on.

4 MR. NORDBY: Whether it is prima facie.

5 THE COURT: I don't have any doubt about it, an
6 as I suggested to you a moment ago. I don't see how you
7 can really seriously advance your argument in the light of
8 the fact that the checks on their faces in two instances
9 have the word AMPI, Inc.; the conversation which the witness
10 stated he had with him; the correspondence that was exchanged
11 between them.

12 MR. NORDBY: I don't think any weight or very
13 little at the most, could be put on the fact that Lilly
14 said there was a contribution from AMPI. I submit that is
15 similar to if I were to go home and take my daughter a
16 little Sesame Street puppet and said I got it in New York
17 and expect her to infer that I stole it in New York.

18 THE COURT: You may argue that to a jury if you
19 think that is a logical argument.

20 The motion is denied.

21 MR. NORDBY: Next we have submitted an instruc-
22 tion requesting that you charge venue must be proved beyond
23 a reasonable doubt.

24 The Government has requested a preponderance of
25 the evidence instruction. The Government has also said,

1 rke 5

2 and I don't understand its argument, that we have waived
3 this issue by not raising it pretrial.

4 Surely the factual question of the element of
5 venue is a different one from the request for a change of
6 venue. I am not aware of any law that indicates that
7 general use would be waived. In any event, the indictment
8 alleged that Mr. Chestnut did certain acts in New York.

9 THE COURT: Or caused the acceptance and
10 receipt.

11 MR. NORDBY: I will come to that. I believe
12 that the Government is required to prove and I submit beyond
13 a reasonable doubt, that the causation, in other words, Mr.
14 Chestnut's acts had to occur in New York because under the
15 causing section of 18 U.S.C. 2 sub b, Mr. Chestnut is charged.
16 He is not charged with aiding and abetting contrary to the
17 Government's request. Causation is a different matter. It
18 does not require a guilty principle and I assume that
19 is why the Government charged causation rather than aiding
20 and abetting.

21 By the same token, aiding and abetting, the
22 crime is committed by the principal. Therefore, aiding and
23 abetting in the slightest way becomes a crime. It makes the
24 aider and abetter the principal, but the causation is quite
25 a different matter. You can cause someone to do a perfectly

1 rke 6

2 innocent act and still be guilty of it as if you did it
3 yourself.

4 There was no crime, I submit here committed by
5 Lennen & Newell to which Mr. Chestnut is a principal. He
6 is alleged to have caused them to do something which would
7 have been a crime if he had done it because he was represent-
8 ing Humphrey and therefore the proof must be -- well, the
9 proof of venue and whatever standard the Court determines,
10 and I submit it is beyond a reasonable doubt, must put Mr.
11 Chestnut in New York, must put venue in this district,
12 his acts or some other nucleus --

13 THE COURT: You mean by that he had to deposit
14 the check himself here in New York?

15 Did you hear the testimony of that last witness
16 and did you hear the Court's questions where Bankers Trust
17 Company was located?

18 MR. NORDBY: Yes. The conduct attributed to Mr.
19 Chestnut in this case took place in Minnesota. If the venue
20 as a matter of law was in Minnesota --

21 THE COURT: Let's not spend time on it, please.
22 We are getting into a discussion of law in the Ferrara case,
23 and other cases.

24 Do you want to answer him?

25 MR. BANNIGAN: I think the Government need not

1 rke 7

2 prove venue beyond a reasonable doubt. The cases are clear.
3 Moreover, to the extent there is any venue question here,
4 it was waived when the jury was picked. The defendants
5 were given all of the facts in our bill of particulars what
6 happened in New York. If they didn't make a motion prior
7 to swearing in that jury to change venue, they have waived
8 it and the case so holds.

9 MR. NORDBY: May I just respond to that. Motion
10 for a change of venue wasn't made because the indictment
11 said he acted in New York. We asked for discovery and we got
12 a bill of particulars that said he made calls in New York or
13 to New York and did things in New York.

14 Now we hear the evidence and he is nowheres
15 near New York.

16 THE COURT: The motion is denied.

17 Does that conclude your motion?

18 MR. NORDBY: May I have a moment to confer?

19 (Pause.)

20 MR. NORDBY: That is all I have, your Honor.

21 MR. COCHRANE: I was just wondering what the
22 Court's plans are. We have some witnesses which I would
23 respectfully ask the Court for a five or ten minute recess.

24 THE COURT: Will they be lengthy witnesses?

25 MR. COCHRAN: I believe so, I don't know. It is

1 rke 8

2 Mr. Thomson's decision and I haven't had a chance to confer
3 with them.

4 THE COURT: If you want to start fresh in the,
5 morning.

6 MR. COCHRAN: We will take that last choice,
7 your Honor, and start fresh in the morning.

8 THE COURT: I thought that is what you were
9 heading for, why didn't you say so directly.

10 Call the jury in.

11 Before you call the jury in, I want some idea
12 of time. Will the lawyers come up off the record.

13 (Discussion held off the record.)

14 (Jury present.)

15 THE COURT: Members of the jury, as you know
16 the Government has rested and the defendant is now to go
17 forward.

18 However, a request has been made because of the
19 hour that we start fresh tomorrow morning and I think it is
20 a reasonable request, so we will take our adjournment for
21 the day and start tomorrow morning at our usual time of
22 10 o'clock.

23 Again, I will ask you to be inside so we could
24 start promptly and make allowance for subway delays.

25 Please bear in mind my instruction given at the

1 rke 9

2 very start of the trial about not having any discussion
3 with any person and I also add to that admonition, not
4 reading anything about the case or listening to the radio
5 or watching something on television. You are here and
6 you hear every word and you don't need anybody's comment.

7 I say good night to all of you.

8 (Jury leaves the courtroom.)

9 (Adjournment taken to 10 a.m., May 7, 1975.)

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STATE OF MINNESOTA

COUNTY OF RAMSEY

JACK S. NORDBY, OF THE CITY OF ST. PAUL, COUNTY OF RAMSEY
IN THE STATE OF MINNESOTA, BEING DULY SWORN, SAYS THAT ON THE 26th
DAY OF AUGUST, 1975, HE SERVED TWO COPIES OF APPELLANT'S BRIEF AND
ONE COPY OF THE APPENDIX IN THE CASE OF UNITED STATES V. CHESTNUT,
DOCKET NO. 75-1268 UPON PAUL J. CURRAN, UNITED STATES ATTORNEY FOR THE
SOUTHERN DISTRICT OF NEW YORK, BY MAILING TO HIM SAID COPIES, POSTAGE
PREPAID AT MINNEAPOLIS, MINNESOTA, AND BY DEPOSITING SAME IN THE POST
OFFICE AT MINNEAPOLIS, MINNESOTA, DIRECTED TO SAID ATTORNEY AT
1 ST. ANDREW'S PLAZA, NEW YORK, NEW YORK, 10007.


JACK S. NORDBY

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 26th DAY OF AUGUST, 1975.

